



सत्यमेव जयते

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सं. 33]

नई दिल्ली, अगस्त 9—अगस्त 15, 2015, शनिवार/श्रावण 18—श्रावण 24, 1937

No. 33]

NEW DELHI, AUGUST 9—AUGUST 15, 2015, SATURDAY/SRAVANA 18—SRAVANA 24, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 अगस्त, 2015

का.आ. 1601.—वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 की धारा 21(1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार ने यह निर्णय लिया है कि डॉ॰ शशांक सक्सेना, आर्थिक सलाहकार-II, वित्तीय सेवाएं विभाग, भारत सरकार, तत्काल प्रभाव से, प्रतिभूतिकरण से संबंधित लेन-देनों के पंजीकरण, वित्तीय आस्तियों के पुनर्गठन तथा संपत्तियों से सृजित प्रतिभूति हित के उद्देश्य से केन्द्रीय रजिस्ट्रार, केन्द्रीय रजिस्ट्री के रूप में केन्द्र सरकार द्वारा नियमित पदधारी की नियुक्ति होने तक, केन्द्रीय रजिस्ट्रार और प्रबंध निदेशक एवं मुख्य कार्यपालक अधिकारी, केन्द्रीय रजिस्ट्री के पद का अतिरिक्त प्रभार संभालेंगे।

[फा० सं० 56/05/2007-(बीओ-II)-रिकवरी]

एम० एम० दौला, अवर सचिव,

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 10th August, 2015

S.O. 1601.—In exercise of the powers conferred under section 21 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Central Government has decided that

3326GI/15

Dr. Shashank Saksena, Economic Adviser II, Department of Financial Services, Government of India will hold additional charge with immediate effect for the post of Central Registrar and Managing Director and Chief Executive Officer, Central Registry for the purpose of registration of transactions relating to Securitisation, reconstruction of financial assets and security interest created over the properties till the time a regular incumbent is appointed by the Central Government as Central Registrar, Central Registry.

[F. No. 56/05/2007-(BO-II)-Recovery]

M.M. DAWLA, Under Secy.

विदेश मंत्रालय

(सी०पी०वी० प्रभाग)

नई दिल्ली, 11 अगस्त, 2015

का.आ. 1602.—राजनयिक और कौंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केन्द्र सरकार के द्वारा श्री गुलशन कुमार, सहायक; श्री अशोक कुमार, सहायक; श्री राकेश रुपेला, निजी सहायक; और श्री सौंदरया झा; निम्न श्रेणी लिपिक को 11 अगस्त, 2005 से भारत के कौंसुलावास, दुबई में सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं० टी. 4330/1/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

(3355)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 11th August, 2015

S.O. 1602.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorizes Shri Gulshan Kumar, Assistant; Shri Ashok Kumar, Assistant; Shri Rakesh Rupela, PA; and Shri Soundarya Jha, LDC in Consulate General of India, Dubai to perform the duties of Assistant Consular Officer with effect from 11 August, 2015.

[No. T. 4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय,
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 13 अगस्त, 2015

का.आ. 1603.—केन्द्र सरकार एतद्वारा दिल्ली पुलिस स्थापन अधिनियम 1946 (1946 का अधिनियम सं० 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए ओडिशा प्रदेश सरकार, गृह विभाग, भुवनेश्वर के दिनांक 27.10.2014 की अधिसूचना सं० 39445/सी एंड एचआर द्वारा

प्राप्त सहमति से ओडिशा प्रदेश राज्य के भीतर पुरी तट पुलिस स्टेशन में अमित अग्रवाल के परिवार के सदस्यों की हत्या के संबंध में दिनांक 14.12.2013 को दर्ज मामला संख्या 215 के अपराध के अन्वेषण के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकार क्षेत्र का विस्तार संपूर्ण ओडिशा राज्य पर करती है।

[सं० 228/61/2014-एवीडी-II]

अजीत कुमार, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 13th August, 2015

S.O. 1603.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Odisha, Home Department, Bhubaneswar vide Notification No. 39445/C&HR dated 27.10.2014, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Odisha for investigation of Puri Sea Beach Police Station Case No. 215 dated 14.12.2013 relating to murder of family members to Amit Agrawal.

[No. 228/61/2014-AVD-II]

AJIT KUMAR, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 7 अगस्त, 2015

का.आ. 1604.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

अनुसूची

क्र० सं०	लाइसेंस सं०	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंस धारी का नाम व पता	भारतीय मानक का शीर्ष	भा मा सं० (भाग/अनुभाग): वर्ष
1.	6500006095	20150702	मेसर्स तंगामइल ज्वेलरी लिमिटेड 109-110, कुमारन रोड तिरुप्पुर-641 601	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी—शुद्धता एवं मुहरांकन	IS 1417: 1999
2.	6500006196	20150702	मेसर्स तंगामइल ज्वेलरी लिमिटेड 11A/1, कच्चेरी स्ट्रीट, शक्ति गोपी मुख्य सड़क गोबीचेट्टीपालयम-638 452	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/शिल्पकारी—शुद्धता एवं मुहरांकन	IS 1417: 1999
3.	6500006297	20150707	मेसर्स ईशा कलॉथिंग 14/93A, 7 गाँधी स्ट्रीट, अविनाशि ब्लॉक, राक्कैयापलयम, अविनाशि तालुक, तिरुप्पुर-641 654	पैकेजबंद पेय जल (पैकेजबंद) मिनरल जल के अलावा)	IS 14543: 2004

क्र० सं०	लाइसेंस सं०	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्ष	मा मा सं० (भाग/अनुभाग): भाग
4.	6500006398	20150707	मेसर्स वी० आर० पम्पस सं० 26, महालक्ष्मी गार्डन्स, तोट्टीपालयम रोड, चिन्नियमपालयम, कोयम्बतूर-641 062	गहरे कुओं के लिए निम्नजनीय पम्पसेट	IS 14220:1994
5.	6500006499	20150708	मेसर्स तंगामइल ज्वेलरी लिमिटेड 11A/1, कच्चेरी स्ट्रीट, शक्ति गोपी मुख्य सड़क गोबीचेट्टीपालयम-638 452	चाँदी एवं चाँदी मिश्रधातुएं आभूषण/शिल्पकारी—शुद्धता एवं मुहरांकन	IS 2112:2003
6.	6500006503	20150708	मेसर्स तंगामइल ज्वेलरी लिमिटेड 109-110, कुमारन रोड, तिरुप्पुर-641601	चाँदी एवं चाँदी मिश्रधातुएं आभूषण/शिल्पकारी—शुद्धता एवं मुहरांकन	IS 2112:2003
7.	6500006604	20150714	मेसर्स श्री अम्मन इंडस्ट्रीस सं० 7, जगन्नाथन इंडिस्ट्रियल एस्टेट, अतिपालयम रोड, चिन्नावेदमपट्टी, कोयम्बतूर-641 049	कृषि एवं जल आपूर्ति के लिए साफ ठंडे पानी के बिजली के मोनोसेट पम्पस	IS 9079:2002
8.	6500006806	20150717	मेसर्स कुनसन्स पाइप्स प्राइवेट लिमिटेड एस एफ सं० 458/1, 458/2, 459/1A, 459/2 वेल्लमडी, कोयम्बतूर-641 110	विद्युत प्रतिष्ठापन के लिए वाहिका—भाग 3—सख्त एवं सादा विद्युत अवरोधी वाहिका	IS 9537: Part 3: 1983
9.	6500006705	20150717	मेसर्स प्रभु इंडस्ट्री 733/4, तोट्टीपालयम रोड, सिविल ऐरोड्रॉम पोस्ट कोयम्बतूर-641 014	साफ, ठंडे पानी के लिए अपकेंद्रीय पुनरुत्पादक पम्प	IS 8472:1998
10.	6500006907	20150722	मेसर्स महालक्ष्मी डायरी 1/492, कल्डेनपेट, सोमनूर रोड, पल्लडम तालुक, तिरुप्पुर-641 401	मलाईरहित दूध पाउडर—भाग-1—मानक रोड	IS 13334:(Part 1) भाग 2014
11.	6500007097	20150724	मेसर्स श्री तंगम्मन मिनरल्स 2/800(11), श्री अमरजोती गार्डन, वीरापान्डी (के रास्ते), गणपतिपालयम पोस्ट, पल्लडम तालुक, तिरुप्पुर-641 605	पैकजबंद पेय जल (पैकजबंद) मिनरल जल के अलावा)	IS 14543:2004
12.	6500007303	20150731	मेसर्स कावेरी पॉलीमर्स एण्ड इंडस्ट्रीस 159/1, टी वी एस नगर रोड, कवुन्दतपालयम, कोयम्बतूर-641 030	पेयजल आपूर्ति के लिए अप्लास्टिक पी वी सी पाइप्स	IS 4985:2000

[सं० सीएमडी/13:11]

एम० सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**(Department of Consumer Affairs)****(BUREAU OF INDIAN STANDARDS)**

New Delhi, the 7th August, 2015

S.O. 1604.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulation, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule:

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No. Part/ Sec. Year
1.	6500006095	20150702	M/s. Thangamayil Jewellery Limited 109-110, Kumaran Road, Tiruppur - 641 601	Gold and Gold Alloys, Jewellery/Artefacts Fineness and Marking	IS 1417 : 1999
2.	6500006196	20150702	M/s. Thangamayil Jewellery Limited 11A/1, Cutcherry Street, Sakthi Gopi Main Road, Gobichettipalayam - 638 452	Gold and Gold Alloys, Jewellery/Artefacts Fineness and Marking	IS 1417 : 1999
3.	6500006297	20150707	M/s. Isha Clothing 14/93-A, 7, Gandhi Street, Avinashi Block, Rakkiya Palayam, Avinashi Taluk, Tirupur - 641 654	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
4.	6500006398	20150707	M/s. V.R. Pumps No. 26, Mahalakshmi Gardens, Thottipalayam Road Chinniyampalayam, Coimbatore-641 062	Openwell Submersible Pumpsets	IS 14220 : 1994
5.	6500006499	20150708	M/s. Thangamayil Jewellery Limited 11A/1, Cutcherry Street, Sakthi Gopi Main Road, Gobichettipalayam - 638 452	Silver and Silver Alloys, Jewellery/Artefacts - Fitness and Marking	IS 2112 : 2003
6.	6500006503	20150708	M/s. Thangamayil Jewellery Limited 109-110, Kumaran Road, Tiruppur - 641601	Silver and Silver Alloys Jewellery/Artefacts- Fineness and Marking	IS 2112 : 2003
7.	6500006604	20150714	M/s. Sri Amman Industries No. 7, Jaganathan Industrial Estate, Athipalayam Road, Chinnavedam Patti, Coimbatore - 641 049	Electric Monoset Pumps for Clear, Cold Water for Agricultural and Water Supply Purposes	IS 9079 : 2002
8.	6500006806	20150717	M/s. Kunsons Pipes Pvt. Ltd. SF No. 458/1, 458/2, 459/1A, 459/2 Vellamadi, Coimbatore - 641 110	Conduits for electrical installations-part 3—Rigid plain conduits of insulating materials	IS 9537 : Part 3: 1983
9.	6500006705	20150717	M/s. Prabhu Industry 733/4A, Thottipalayam Road, Civil Aerodrome (Post), Coimbatore - 641 014	Centrifugal Regenerative Pumps for clear, cold water	IS 8472 : 1998

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No. Part/ Sec. Year
10.	6500006907	20150722	M/s. Sri Mahalakshmi Dairy 1/492, Kaldenpet, Somanur Road, Palladam (Tk), Tiruppur — 641 401	Skimmed Milk Powder - Part 1 - Standard Grade	IS 13334 (Part 1): 2014
11.	6500007097	20150724	M/s. Sri Thangamman Minerals 2/800 (11), Sri Amarjothi Garden, Veerapandi (Via), Ganapathipalayam Post, Palladam Taluk, Thiruppur — 641 605	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
12.	6500007303	20150731	M/s. Kavery Polymers & Industries 159/1, TVS Nagar Road, Kavundampalayam, Coimbatore — 641 030	Unplasticized PVC pipes for Potable Water Supplies	IS 4985 : 2000

[No. CMD/13:11]

M. SADASIVAM, Scientist 'F' and Head

नई दिल्ली, 7 अगस्त, 2015

का.आ. 1605.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियमन 5 के उपविनियमन (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शाई गई तारीख से रद्द/स्थगित कर दिया गया है:—

अनुसूची

क्र० सं०	लाइसेंस सं० सी एम/एल-	लाइसेंसधारी का नाम व पता	स्थगित किए गए/रद्द किए गए लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द होने की तिथि
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जुलाई 2015 - शून्य

[सं० सी एम डी/13:13]

एम० सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th August, 2015

S.O. 1605.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies that the licence particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

SCHEDULE

Sl. No.	Licence No. CM/L	Name & Address of the Licensee	Article/Process with relevant Indian Standard covered by the licence cancelled/suspension	Date of Cancellation
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JULY 2015 - NIL

[No. CMD/13: 13]

M. SADASIVAM, Scientist 'F' & Head

नई दिल्ली, 10 अगस्त, 2015

का.आ. 1606.— भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस प्रदान किए गए हैं:

अनुसूची

क्रम सं०	लाइसेंस नं०	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भारतीय मानक सं०	भाग	अनु०	वर्ष
01	5900003206	2050401	ज्वेलर्स विजय राज एण्ड संस सदर रोड, बालोद, तहसील-बालोद, जिला- बालोद, छत्तीसगढ़- 491226	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन- विशिष्ट	1417			1999
02	5900003307	20150413	श्री साई वाटर पैकेजिंग इंडस्ट्रीज ग्राम-भुरकोनी, ग्राम पंचायत- छपोरा, ब्लॉक-धरसीवा मंधार रोड, जिला-रायपुर (छग०)	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
03	5900003408	2050413	एरिस्टो ट्रांसमीसन प्रा० लि० प्लॉट नं० 100 एवं 101, इंडस्ट्रीयल एस्टेट, सिलतारा, फेज- II, जिला- रायपुर, छग०- 492001	संरचनात्मक प्रयोग के लिये इस्पात के खोखले काट- विशिष्ट	4923			1997
04	5900003509	2150413	एरिस्टो ट्रांसमीसन प्रा० लि० प्लॉट नं० 100 एवं 101, इंडस्ट्रीयल एस्टेट, सिलतारा, फेज-II, जिला- रायपुर, छग०- 492001	पानी और मलजल के लिए इस्पात पाईप (168.3 से 2540 मिमी बाहरी व्यास के)- विशिष्ट	3589			2001
05	5900003610	2150413	एरिस्टो ट्रांसमीसन प्रा० लि० प्लॉट नं० 100 एवं 101, इंडस्ट्रीयल एस्टेट, सिलतारा, फेज-II, जिला- रायपुर, छग०- 492001	सामान्य गुणता के संरचना इस्पात- विशिष्ट	9295			1983
06	5900003711	20150421	समृद्धि ज्वेलर्स बंसाली हाईट्स, सदर बाजार, नहाता मार्केट के समीप, रायपुर (छग०)- 492001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्ट	1417			1999
07	5900003812	20150427	हाई-टेक पॉवर एण्ड स्टील लि० ग्राम-परसदा, पोस्ट-सरोरा, तहसील- तिलदा, जिला- रायपुर, छग०- 493114	कंक्रीट प्रबलन के लिए उच्च शक्ति विरूपित इस्पात सरिए एवं तार- विशिष्ट	1786			2008

क्रम सं०	लाईसेंस नं०	स्वीकृत करने की तिथि वर्ष/माह	लाईसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भारतीय मानक सं०	भाग	अनु०	वर्ष
08	5900003913	20150430	मॉ काली एलॉयज उद्दोग (प्रा०) लि० ग्राम-पाली, पोस्ट- गैरवानी, जिला- रायगढ़, छग०- 496001	सामान्य संरचना इस्पात हेतु पुनर्वैल्लन के लिए कार्बन ढलवों इस्पात इंगट, बिलेट, ब्लूम एवं स्लैब-विशिष्ट	2830			2012
09	5900004006	20150429	ज्वेलर्स ग्राम चंद अनील कुमार सुराना जवाहर चौक, दुर्ग, छग०- 491001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्ट	1417			1999
10	5900004107	20150506	सिखर पैकेज ड्रिफिंग वाटर खसरा नं० 581/2, ग्राम-झरहागांव, जिला-मुंगेली छग०-495334	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	14543			2004
11.	5900004208	20150506	लालचंदानी केमिकल्स शेड नं० 21, सेक्टर-सी, इंडस्ट्रीयल एरिया, सिरिगिट्टी, जिला- बिलासपुर, छग०-495 001	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	14543			2004
12.	5900004309	20150430	जे०पी० बिबरेज्स बड़े उर्ला, अभनपुर, जिला- रायपुर, छग०-493 661	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के)	14543			2004
13.	5900004410	20150508	बालाजी पॉलीप्लास्ट प्लॉट नं० 328/40, मेटल पार्क इंडस्ट्रीयल एरिया, रवाभाटा, जिला- रायपुर, छग०-493 111	पानी की आपूर्ति हेतु उच्च घनत्व पॉलीइथिलीन पाइप	4984			1995
14.	5900004511	20150507	बालाजी पॉलीप्लास्ट प्लॉट नं० 328/40, मेटल पार्क इंडस्ट्रीयल एरिया, रवाभाटा, जिला- रायपुर, छग०-493 111	सिंचाई उपस्कर- स्प्रिंकलर पाइप- विशिष्ट भाग 2 सहज संयोजी पालीएथिनीन पाइप तथा फिटिंग्स	14151	2		2008
15.	5900004612	20150512	भारती बिबरेज्स हाउस प्लॉट नं० 99, पथरडीह, धरसीवा ब्लॉक, जिला- रायपुर, छग०-492 001	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	14543			2004

क्रम सं०	लाईसेंस नं०	स्वीकृत करने की तिथि वर्ष/माह	लाईसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भारतीय मानक सं०	भाग अनु०	वर्ष
16.	5900004713	20150519	श्री रायपुर सीमेंट प्लांट (श्री सीमेंट लि० की एक ईकाई) ग्राम- खापरडीह, तहसील- सिमगा, भाटापारा, जिला- बालोदा बाजार छत्तीसगढ़-493 332	पोर्टलैंड पोजोलाना सीमेंट- विशिष्ट	1489	1	1991
17.	5900004814	20150519	छत्तीसगढ़ टेंट तारपुलीन इंडस्ट्रीज़ मेन रोड़ ग्राम- कांदरका, तहसील- धामधा, जिला- दुर्ग छत्तीसगढ़	अल्प घनत्व पॉलीथीन फिल्म की विशिष्ट	2508		1984
18.	5900004907	20150521	श्री रायपुर सीमेंट प्लांट (श्री सीमेंट लि० की एक ईकाई) ग्राम- खापरडीह, तहसील- सिमगा, भाटापारा, जिला- बालोदा बाजार छत्तीसगढ़-493 332	पोर्टलैंड धातुमल सीमेंट	455		1989
19.	5900005008	20150527	श्री रानी सती मिनरल वाटर ग्राम- तिलाई, तहसील- अकलतारा, जिला- जांजगीर-चंपा, छत्तीसगढ़-495 552	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543		2004
20.	5900005109	20150611	यालस्को रीयल ईस्टेट एण्ड एग्रो फार्मिंग लिमिटेड ग्राम- साल्हे, तहसील- डोंगरगांव, जिला- राजनांदगांव छत्तीसगढ़-491 661	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543		2004
21.	5900005210	20150615	श्री पगारिया ज्वेलर्स हलवाई लेन, रायपुर, हलवाई लेन, रायपुर, छग-492 001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुकरांकन-विशिष्ट	1417		1999
22.	5900005311	20150707	मॉ महामाया ज्वेलर्स महामाया मार्केट, मेन रोड, शक्ति, जिला- जांजगीर-चंपा, छग-495 689	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुकरांकन- विशिष्ट	1417		1999

क्रम सं०	लाईसेंस नं०	स्वीकृत करने की तिथि वर्ष/माह	लाईसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भारतीय मानक सं०	भाग	अनु०	वर्ष
23.	5900005412	20150723	ओम पॉलीमर्स खसरा नं० 316/1 पार्ट, ग्राम- गथुला, पोस्ट-बोरी, जिला- राजनंदगांव छत्तीसगढ़-491 441	विद्युत संस्थापनों के लिए कंड्यूट्स भाग: 3 विद्युत रोधन सामग्री के दृढ़ सादे कंड्यूट- विशिष्ट	9537	3		1983
24.	5900005513	20150730	बालाजी बिबरेज्स ग्राम- तंदुआ, वाया- तिलदा, जिला- रायपुर, छत्तीसगढ़-493 116	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	14543			2004
25.	5900005614	20150731	सत्या आयरन एण्ड स्टील प्रा० लि० 5/एल, हैवी इंडस्ट्रियल एरिया, हाथखोज, भिलाई, जिला- दुर्ग, छत्तीसगढ़-490026	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा)	14543			2004

[सं० केन्द्रीय प्रमाणन विभाग/13:11]
एस० भावाल, वैज्ञानिक 'ई' एवं प्रमुख

New Delhi, the 10th August, 2015

S.O. 1606.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule:

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part.	Sec.	Year
01.	5900003206	20150401	Jewellers Vijay Raj and Son's Sadar Road Balod, Telhil- Balod, Chhattisgarh-491 226	Gold and gold alloys, jewellery/artefacts - fineness and marking -	1417			2004
02.	5900003307	20150413	Shri Sai Water Packaging Industries Village: Bhurkoni, G.P.- Chhapora, Block- Dharsiva, Mandhar Road, District- Raipur Chhattisgarh	Packaged drinking water (other than packaged natural mineral water) -	14543			2004
03.	5900003408	20150413	Aristo Transmission Pvt. Ltd., Plot No. 100 & 101, Industrial Estate, Siltara, Phase-II, Raipur (C.G.)-492 001	Hollow steel sections for structural use	4923			1997

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part.	Sec.	Year
04.	5900003509	20150413	Aristo Transmission Pvt. Ltd., Plot No. 100 & 101, Industrial Estate, Siltara, Phase-II, Raipur (C.G)-492 001	Steel pipes for water and sewage (168.3 to 2540 mm outside diameter) -	3589			2001
05.	5900003610	20150413	Aristo Transmission Pvt. Ltd., Plot No. 100 & 101, Industrial Estate, Siltara, Phase-II, Raipur (C.G)-492 001	Steel tubes for idlers for belt conveyors	9295			1983
06.	5900003711	20150421	Samriddhi Jewellers Bansali Heights, Sadar Bazar, Nr. Nahta Market, Raipur Chhattisgarh-492 001	Gold and gold alloys, jewellery/artefacts - fineness and marking-	1417			1999
07.	5900003812	20150427	Hi-Tech Power & Steel Limited Village- Parsada, Post- Sarora, The/- Tilda District: Raipur Chhattisgarh-493 114	High strength deformed steel bars and wires for concrete reinforcement	1786			2008
08.	5900003913	20150430	Maa Kali Alloys Udyog (P) Ltd. Vill- Pali, P.O.-Gairwani District- Raigarh, Chhattisgarh-496 001	Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general	2830			2012
09.	5900004006	20150429	Jewellers Prem Chand Anil Kumar Surana Jawahar Chowk, Durg Chhattisgarh-491 001	Gold and gold alloys, jewellery/artefacts - fineness and marking-	1417			1999
10.	5900004107	20150506	Sikhar Package Drinking Water Khasra No. 581/2 Vill.- Jharhagaon, Distt.-Mungeli Chhattisgarh-495 334	Packaged drinking water (other than packaged natural mineral water) -	14543			2004
11.	5900004208	20150506	Lalchandani Chemicals Shed No. 21, Sec.-C, Industrial Area, Sirigitti, District- Bilaspur, Chhattisgarh-495 001	Packaged drinking water (other than packaged natural mineral water) -	14543			2004
12.	5900004309	20150430	J.P. Beverages Bade Urla, Abhanpur District-Raipur, Chhattisgarh-493 661	Packaged drinking water (other than packaged natural mineral water) -	14543			2004

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part.	Sec.	Year
13.	5900004410	20150508	Balaji Polyplast Plot No. 328/40, Metal Park Industrial Area, Rawabhata, District- Raipur Chhattisgarh-493 111	High density Polyethylene pipes for potable water supplies	4984			1995
14.	5900004511	20150507	Balaji Polyplast Plot No. 328/40, Metal Park Industrial Area, Rawabhata, District- Raipur Chhattisgarh-493 111	Irrigation equipment - sprinkler pipes - part 2: quick coupled polyethylene pipes	14151	2		2008
15.	5900004612	20150512	Bharti Beverages House Plot No. 99, Pathardih, Dharsiwa Block, District- Raipur Chhattisgarh-492 001	Packaged drinking water (other than packaged natural mineral water) -	14543			2004
16.	5900004713	20150519	Shree Raipur Cement Plant (A unit of Shree Cement Ltd.) Village: Khapradih, Tehsil: Simga, District: Baloda Bazar, Chhattisgarh-493 332	Portland pozzolana cement part 1 flyash	1489	1		1991
17.	5900004814	20150519	Chhattisgarh Tent Tarpaulin Industries Main Road, Village: Khandarka, Tehsil: Dhamdha, District-Durg, Chhattisgarh	Low density polyethylene films	2508			1984
18.	5900004907	20150521	Shree Raipur Cement Plant (A unit of Shree Cement Ltd.) Village Khapradih, Tehsil: Simga, District: Baloda Bazar, Chhattisgarh-493 332	Portland slag cement	455			1989
19.	5900005008	20150527	Sri Rani Sati Mineral Water Village- Tilai, Tah.- Akaltara, Janjgir, District- Janjgir-Champa Chhattisgarh-495 552	Packaged drinking water (other than packaged natural mineral water) -	14543			2004
20.	5900005109	20150611	Yalsco Real Estate & Agro Farming Ltd. Village- Salhe, Tah-Dongargaon, District- Rajnandgaon, Chhattisgarh-491 661	Packaged drinking water (other than packaged natural mineral water) -	14543			2004
21.	5900005210	20150615	Shri Pagariya Jewellers Halwai Lane, Raipur, Chhattisgarh-492 001	Gold and Gold alloys, jewellery/artefacts - fineness and marking -	1417			1999

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part.	Sec.	Year
22.	5900005311	20150707	Maa Mahamaya Jewellers Mahamaya Market, Main Road, Sakti, District- Janjgir Champa, Chhattisgarh-495 689	Gold and gold alloys, jewellery/artefacts fineness and marking -	1417			1999
23.	5900005412	20150723	Om Polymers Kharsa No. 316/1 Part, Village: Gathula, Post- Bori, District : Rajnandgaon Chhattisgarh-491 441	Conduits for electrical Installations: Part 3 Rigid plain conduits of insulating materials	9537	3		1983
24.	5900005513	20150730	Balaji Beverages Vill- Tandua, Via- Tilda, District: Raipur Chhattisgarh-493 116	Packaged drinking water (other than packaged natural mineral water) -	14543			2004
25.	5900005614	20150731	Satya Iron And Steel Pvt. Ltd. 5/L, Heavy Industrial Area, Hathkhoj, Bhilai, District-Durg, Chhattisgarh-490 026	Packaged drinking water (other than packaged natural mineral water) -	14543			2004

[No. CMD/13:11]
S. BHOWAL, Scientist-E & Head

नई दिल्ली, 10 अगस्त, 2015

का.आ. 1607.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस रद्द किए गए हैं:

अनुसूची

क्रम सं०	लाइसेंस नं०	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द/स्थगित करने की तिथि
1.	5803568	मैसर्स, विकास इण्डस्ट्री, 32/2, मुकेश निकुंज, बीजेपी ऑफिस के पीछे, सिविल लाइन, बलोदा बाजार, रायपुर, छत्तीसगढ़-493 332	भा मा 14543 : 2004 पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनिरल जल के अलावा) - विशिष्ट	17.07.2015
1.	8978824	मैसर्स माँ महामाया रोलिंग मिल प्राइवेट लिमिटेड, 6/2, ग्राम: दिलारी जेरवानी के पास, जिला: रायगढ़, छत्तीसगढ़-496 001	भा मा 1786 : 2008 कंक्रीट प्रबलन के लिए उच्च शक्ति विरूपित इस्पात सरिए एवं तार - विशिष्ट	30.07.2015

[सं० केन्द्रीय प्रमाणन विभाग/13:11]
एस० भावाल, वैज्ञानिक-ई एवं प्रमुख

New Delhi, the 10th August, 2015

S.O. 1607.—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the licences particulars of which are given below have been **cancelled/suspended** with effect from the date indicated against each:

SCHEDULE

Sl. No.	Licences No. CM/L-	Name and address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
1.	5803568	Vikas Industry 32/2, Mukesh Nikunj, Behind BJP Office< Vicil Line, Baloda Bazar, District- Raipur, Chhattisgarh-493 332	IS 14543 : 2004 Packaged drinking water (other than packaged natural mineral water) - Specification	17.07.2015
2.	8978824	Maa Mahamaya Rolling Mill Pvt. Ltd. 6/2 Village Delari, Near Germani Distt : Raigarh Chhattisgarh-496 001	IS 1786 : 2008 High strength deformed steel bars and wires for concrete reinforcement-Specification	30.07.2015

[No. CMD/13:11]

S. BHOWAL, Scientist-E & Head

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

नई दिल्ली, 25 फरवरी, 2015

का.आ. 1608.—दंत चिकित्सक अधिनियम, 1948 (1948 का 16) के खण्ड 10 के उप खंड (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार भारतीय दंत चिकित्सा परिषद् के साथ परामर्श के बाद, एतद्वारा उक्त अधिनियम की अनुसूची के भाग-1 में निम्नलिखित संशोधन करती है, नामतः—

2. दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-1 में क्रम सं. 72 के कॉलम 2 और 3 की मौजूदा प्रविष्टियों में राजस्थान डेंटल कॉलेज एवं अस्पताल, जयपुर के सामने राजस्थान स्वास्थ्य विज्ञान विश्वविद्यालय, जयपुर द्वारा प्रदत्त दंत चिकित्सा की डिग्री की मान्यता के संबंध में निम्नलिखित प्रविष्टियों को शामिल किया जाएगा नामतः—

मॉस्टर ऑफ डेंटल सर्जरी

पेरियोडोंटोलॉजी

(3 सीटों सहित, यदि 21.6.2014 को या उससे पहले प्रदान की गई हों)

एमडीएस (पेरियो), राजस्थान स्वास्थ्य

विज्ञान विश्वविद्यालय, जयपुर

कंसर्वेटिव डेंटिस्ट्री और एंडोडॉन्टिक

(3 सीटों सहित, यदि 24.6.2014 को या उससे पहले प्रदान की गई हों)

एमडीएस (कंस. डेंटिस्ट्री), राजस्थान

स्वास्थ्य विज्ञान विश्वविद्यालय, जयपुर

ओर्थोडॉन्टिक्स एंड डेंटोफैसिला आर्थोपेडिक्स

(3 सीटों सहित, यदि 26.6.2014 को या उससे पहले प्रदान की गई हों)

एमडीएस (ओर्थो), राजस्थान स्वास्थ्य

विज्ञान विश्वविद्यालय, जयपुर

ओरल मेडिसिन एंड रेडियोलॉजी

(3 सीटों सहित, यदि 28.6.2014 को या उससे पहले प्रदान की गई हों)

एमडीएस (ओरल मेडि.), राजस्थान

स्वास्थ्य विज्ञान विश्वविद्यालय, जयपुर

प्रोस्थोडॉन्टिक्स और क्राउन एंड ब्रिज

(3 सीटों सहित, यदि 28.6.2014 को या उससे पहले प्रदान की गई हों)

एमडीएस (प्रोस्थो), राजस्थान स्वास्थ्य

विज्ञान विश्वविद्यालय, जयपुर

[सं. वी-12017/24/2009-डीई (भाग-1)]

सुधीर कुमार, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

New Delhi, the 25th February, 2015

S.O. 1608.—In exercise of the powers conferred by Sub-section(2) of section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:—

2. In the existing entries of column 2&3 of Serial No. 72 in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of Dental Degrees awarded by Rajasthan University of Health Sciences, Jaipur against Rajasthan Dental College and Hospital, Jaipur, the following entries shall be inserted thereunder:—

Master of Dental Surgery

Periodontology
(with 3 seats if granted on or after 21.6.2014)

MDS (Perio), Rajasthan University of
Health Sciences, Jaipur

Conservative Dentistry and Endodontic
(with 3 seats if granted on or after 24.6.2014)

MDS (Cons. Dentistry), Rajasthan
University of Health Sciences, Jaipur

Orthodontics & Dentofacial Orthopaedics
(with 3 seats if granted on or after 26-6-2014)

MDS (Ortho.) Rajasthan University of
Health Sciences, Jaipur

Oral Medicine & Radiology
(with 3 seats if granted on or after 28.6.2014)

MDS (Oral Med.) Rajasthan University
of Health Sciences, Jaipur

Prosthodontics and Crown & Bridge
(with 3 seats if granted on or after 28.6.2014)

MDS (Prosthodontics) Rajasthan University of
Health Sciences, Jaipur

[No. V-12017/24/2009-DE(Pt-I)]
SUDHIR KUMAR, Under Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 12 अगस्त, 2015

का.आ. 1609.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में कृषि एवं सहकारिता विभाग, कृषि मंत्रालय के स्वायत्त निकाय नारियल विकास बोर्ड, कोची के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों को जिसके 80% कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. नारियल विकास बोर्ड, राज्य केन्द्र, रोड सं. 16, जेड लेन, वागले एस्टेट, ठाणे, महाराष्ट्र-400 604

2. नारियल विकास बोर्ड, प्रदर्शन-सह-बीज उत्पादन फार्म, 149, अंबेडकर नगर, डापोली, सतपति एसओ पालघर, महाराष्ट्र-401405

3. नारियल विकास बोर्ड, प्रदर्शन-सह-बीज उत्पादन फार्म, वेगिवाड़ा (गांव) मकान सं. 688, तडिकलापुडी (द्वारा) पश्चिम गोदावरी (जिला) आंध्र प्रदेश-534 452

[सं. 3-3/2011-रा.भा.नीति]

राजेश कुमार सिंह, संयुक्त सचिव

**MINISTRY OF AGRICULTURE
(Department of Agriculture and Cooperation)**

New Delhi, the 12th August, 2015

S.O. 1609.—In pursuance of Sub-Rule (4) of the Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976 the Central Government hereby notifies the following offices which is under the administrative control of the Coconut Development Board, Cochi, an autonomous body of the Department of Agriculture & Cooperation, Ministry of Agriculture, whereof 80% staff have acquired the working knowledge of Hindi-

1. Coconut Development Board, State Centre, Road No. 16, Z Lane, Wagale Estate Thane, Maharashtra - 400 604

2. Coconut Development Board, Demonstration cum Seed Production Farm, 149 Ambedkar Nagar, Dapoli, Satpati SO Palghar, Maharashtra - 401 405

3. Coconut Development Board, Demonstration cum Seed Production Farm Vegivada (Village) P.O. House No. 688 Tadikalapudi (Via) West Godavari (Dist.) Andhra Pradesh-534 452

[No. 3-3/2011-Official Language Policy]

RAJESH KUMAR SINGH, Jt. Secy.

प्रवासी भारतीय कार्य मंत्रालय

नई दिल्ली, 10 अगस्त, 2015

का.आ. 1610.—उत्प्रवास अधिनियम, 1983 (1983 का 31) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा श्री मोहनीश वर्मा, आई०आर०एस० (आई.टी.: 1987), को तत्काल प्रभाव से 5 वर्षों की अवधि के लिए या आगामी आदेशों तक, जो भी पहले हो, प्रवासी भारतीय कार्य मंत्रालय में उत्प्रवास महासंरक्षी के रूप में नियुक्त करती है।

[सं० ए० 42015/16/2015-पी.ए.]

सुतपा मजूमदार, आर्थिक सलाहकार

MINISTRY OF OVERSEAS INDIAN AFFAIRS

New Delhi, the 10th August, 2015

S.O. 1610.—In exercise of the powers conferred by sub-section (1) of Section 3 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby appoints Shri Mohanish Verma, IRS (IT:1987) in the Ministry of Overseas Indian Affairs as Protector General of Emigrants, Ministry of Overseas Indian Affairs with immediate effect for a period of five years or until further orders, whichever is earlier.

[No. A. 42015/16/2015-PA]

SUTAPA MAJUMDAR, Economic Advisor

संचार और सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 10 अगस्त, 2015

का.आ. 1611.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987, 2007 तथा 2011) के नियम 10 (04) के अनुसरण में दूरसंचार अभियांत्रिक केन्द्र (टीईसी), दूरसंचार विभाग, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

2. यह अधिसूचना राजपत्र में प्रकाशन की तारीख से लागू होगी।

[सं० ई-11016/01/2015-राजभाषा]

सुरेश चन्द्र शर्मा, उप महानिदेशक (सी.एण्ड ए.)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Telecommunications)

New Delhi, the 10th August, 2015

S.O. 1611.—In pursuance of rule 10(4) of the Official Languages (use for official purposes of the Union) Rules, 1976 (as amended 1987, 2007 and 2011), the Central

Government hereby notifies the Telecom Engineering Centre (TEC.) Department of Telecom, where more than 80% staff have acquired working knowledge of Hindi.

2. This notification shall come into force from the date of its publication in the Official Gazette.

[No. E-11016/1/2015-O.L.]

SURESH CHANDRA SHARMA, DDG (C.&A.)

युवा कार्यक्रम और खेल मंत्रालय

नई दिल्ली, 5 अगस्त, 2015

का.आ. 1612.—केन्द्रीय सरकार एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के अधीनस्थ कार्यालय राष्ट्रीय सेवा योजना क्षेत्रीय निदेशालय, लखनऊ (उत्तर प्रदेश) जिसके 80% से अधिक कर्मचारीबृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[मि० सं० 11011/2/2008-हि०ए०]

एस० एल० मीना, उप सचिव

MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi, the 5th August, 2015

S.O. 1612.—In pursuance of sub rule (4) of Rule of 10 of Official Language (use for official purpose of the Union) Rule 1976, the Central Government hereby notified National Service Scheme Regional Directorate, Lucknow a Subordinate office of Ministry of Youth Affairs & Sports, whereof more than 80% staff have acquired working knowledge of Hindi.

[F.No. E-11011/2/2008-H.U.]

S. L. MEENA, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 24 सितम्बर, 2014

का.आ. 1613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर्कियोलॉजिकल सर्वे ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 250/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/09/2014 को प्राप्त हुआ था।

[सं० एल-42011/37/99-आईआर (डीयू)]

पी० के० वेणुगोपाल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th September, 2014

S.O. 1613.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 250 of 99) of the Central Government Tribunal cum Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute

between the employers in relation to the management of the Deputy Superintending Archaeological Survey of India and their workman, which was received by the Central Government on 22/09/2014.

[No. L-42011/37/99-IR(DU)]
P.K. VENUGOPAL, Section Officer

ANNEXURE

**BEFORE SRIRAM PARKASH, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, KANPUR.**

INDUSTRIAL DISPUTE No. 250 of 99

Sri Surender Singh,
President,
Bhartiya Puratattva Prekshan Karamchari Parishad,
(INTUC) 68 Sector, 16,
Sikandra, Agra.

And

Superintending Archaeologist,
Archeological Survey of India,
Agra Circle, 12,
Mall Aga Cantt.

AWARD

1. Central Government Mol, New Delhi, *vide* notification No. L-42011/37/99-IR (DU) dated 13.09.99, has referred the following dispute for adjudication to this Tribunal.

2. Whether the action of the Suptd. Archaeologist ASI, Agra Circle in not regularizing the services of 58 workers working in Tajmahal and Etmadudaulla is legal and justified? If not to what relief are entitled?

3. There is a reference for regularization of services of 58 workers as mentioned in the enclosed list.

4. After exchange of pleading between the parties the case was fixed for evidence of the parties. But none of the parties appeared in the case despite providing adequate opportunities to them for adducing their respective evidence in support of their case.

5. Therefore, it is a case of no evidence from either side.

6. The documents filed by both the parties have been perused by me. The claimant has filed 9 documents *vide* list 16/1, mostly all these documents are photocopies and there is no supporting evidence against these documents. Similarly claimant has filed 10 documents *vide* list 19/2 and these are also photocopies. Unless supported by any cogent evidence these documents cannot be read as a evidence. Opposite party has filed 2 documents *vide* paper no. 40/1.

7. I have thoroughly examined the evidentiary value of these documents cognizance cannot be taken of these documents.

8. It is therefore, concluded that neither the union nor the management is inclined to press their claim before the

tribunal. Under the facts and circumstances of the case, the reference is bound to be decided against the Union in the absence of cogent and plausible evidence, as the burden lies on the Union to prove its case before the tribunal but they have failed to do so.

9. Therefore, the reference is decided against the Union and in favour of the management.

10. Reference is answered accordingly.

dt. 31.12.2013 RAM PARKASH, Presiding Officer.

शुद्धि-पत्र

नई दिल्ली, 4 अगस्त, 2015

का.आ. 1614.—इस मंत्रालय की दिनांक 09.05.2006 की अधिसूचना कां.आ. सं-2010 (भारत के राजपत्र के भाग-2, खंड-3, उप-खंड (ii) में 14 मई, 2006 को प्रकाशित) में उल्लिखित 'सिहोर' के राजस्व क्षेत्र का लोप हो जाएगा।

[सं. एस-38013/70-2014-एसएस I]

अजय मलिक, अवर सचिव

CORRIGENDUM

New Delhi, the 4th August, 2015

S.O. 1614.—In this Ministry's Notification S.O. No. 2010 dated 09.05.2006 (published in Part-2, Section-3, Sub-Section(ii) of the Gazette of India on 14th May, 2006), the revenue area of 'Sihor' Mentioned therein shall stand omitted.

[No. S-38013/70-2014-SS-I)]

AJAY MALIK, Under Secy.

नई दिल्ली, 6 अगस्त, 2015

का.आ. 1615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एचएएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, मुम्बई के (संदर्भ संख्या 2/24 ऑफ 2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/08/2015 को प्राप्त हुआ था।

[सं. एल-42012/168/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 6th August, 2015

S.O. 1615.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 2/24 of 2008) of the of the Cent. Govt. Indus. Tribunal cum Labour Court, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Hindustan Aeronautics Limited, and their workmen, received by the Central Government on 06/08/2015.

[No. L-42012/168/2005-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT**

K.B. KATAKE,
Presiding Officer

REFERENCE NO. CGIT-2/24 OF 2008**EMPLOYERS IN RELATION TO THE
MANAGEMENT OF HINDUSTAN AERONAUTICS
LTD.**

The Chief Manager (P & A)
Hindustan Aeronautics Ltd.
Ojhar Township (PO)
Nasik MS 422 207

AND

Their Workmen

The Vice President
Nashik Workers Union
CITU Centre
Thombak Road
Sathpur
Nasik (MS)-422 206

APPEARANCES:

For the Employer : Mr. Abhay Kulkarni,
Advocate

For the Workmen : Mr. R.S. Pande,
Representative.

Mumbai, the 9th February, 2015

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-42012/168/2005-IR (CM-II), dated 07.04.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

Ref. CGIT-2/24 of 2008

"Whether the demand of the Nashik workers' Union for absorption of contract labourers, as per list enclosed is legal and justified? If so, to what relief are they entitled to?"

List of workmen**Stores Department**

1. Kandekar Bajirao Murlidhar
2. Chaudhari Laxman Shivram
3. Dhiklar Bhausaheb Laxman

4. Bhavar Yashwant Puja
5. Jagtap Vilas Madhay
6. Vangurde Vasant Popat
7. Pagar Pradip Shankar
8. Survanshi Arun Popat
9. Gangurde Rajaram Janardhan
10. Jadhav Madhukar Kachru
11. Jadhav Balu Barku
12. Hire Ramcharndra Nivrutti
13. Randhir Vasant Chaburao
14. Nevkar Bharat Kishore
15. Kadam Dhatera Ganpat
16. Sonwane Bhausaheb Bajunath
17. Here Ashok Kashiram
18. Gangurde Suresh Muridhar
19. Pathade Balasaheb Dattaray
20. Potinde Ramkisan Waman
21. Bhandande Nivrutti Lohu
22. Nikam Bal Srishna
23. Dhikale Vasant Tukaram
24. Bairagi Babandas Ramdas
25. Shinde Shivaji Bhimrao
26. Kale Haricharnra Shankar
27. Navre Ramesh Annaji
28. Birari Bapu Pandharinath
29. Loknar Bharat Bhaugi
30. Pathak Arun Ganesh
31. Kakad Gulab Kashiram
32. Padangle Rama Yashwant
33. Mandlik Sashshiv Ramcharndra
34. Kshirsagar Bhaskar Chabu
35. Dhorte Badu Shankar
36. Loknar Anil Dhanaji
37. Dhotre Sitaram Shankar
38. Ghule Ramesh Punjaji
39. Chaure Ramchandra Kashinath
40. Jadhav Raosaheb Eknath
41. Ugle Sahebrao Rambhau
42. Murdhanar Uttam Waman
43. Waghmare Rajendra Kauduiji
44. Sonwane Arun Kishan
45. Dengle Balkrishna Dagur

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| 46. Gholap Kashinath Dagu | 88. Maule Sakharam Kashinath |
| 47. Loknar Santu Dhanaji | 89. Randhir Ashok Chaburao |
| 48. Tajane Shankar Hariabhau | 90. Pimpri Ashok Shankar |
| 49. Gite Ashok Rakmaji | 91. Gagaj Dilip Nivarutti |
| 50. Warde Daulat Murlidhar | 92. More Rajaram Dagu |
| 51. Nikam Balu Dhamuji | 93. Tample Dilip Popat |
| 52. Rumaje Shantaram Ghagu | 94. Loknar Ramesh Bhaguji |
| 53. Khare Pradip Hiranman | 95. Navagire Dattaray Laxman. |
| 54. Chaudhari Balu Shivram | 96. Chaure Naran Kashinath |
| 55. Palsande Shankar Sitaram | 97. Lokhande Balkrishna Baburao |
| 56. Loknar Bhikaji Thakaji | 98. Jadhav Ravindra Vasant |
| 57. Wani Anil Murlidhar | 99. Rokade Vinayak Valchand |
| 58. Ahire Ramesh Trambak | 100. Rokade Saheb Walchand |
| 59. Gangurde Gangadhar Puja | 101. Battse Ashok Shankar |
| 60. Jadhav Dattu Mahadu | 102. Loknar Balu Dhauji |
| 61. Gaikwad Jagannath Barku | 103. Gumbade Somnath Kashinath |
| 62. Berad Raghu Sahud | 104. Rajole Hari Vishram |
| 63. Mojad Davidas | 105. Bairagi Satyrao Adapa |
| 64. Mahajan Jagdish Shivram | 106. Rajkar Chandrakant Lala |
| 65. Pathan Shabir Noorkhan | 107. Jejurkar Dashrath Karbhari |
| 66. Shaikh Baba Chank | 108. Ahire Hiralal Bhila |
| 67. Thakare Balu Budhaji | 109. Ahire Rajendra Baburao |
| 68. Nisal Kisan Sukha | 110. Somwanshi Anna Murlidhar |
| 69. Jagtap Prabhakar Trimbak | 111. Gaware Pandit Nimba |
| 70. Waghchaure Ramesh Yashwant | 112. Gaikwad Gautam waman |
| 71. Nagvekar Gangaram Narayan | 113. |
| 72. Nikam Kandu Baliram | 114. Hadole Ramdas Mohniraj |
| 73. Bhalerao Ashok Raghunath | 115. Loknar Bakerao Baghugi |
| 74. Birari Gangadhar Nimba | 116. Jadhav Kisan Ramchandra |
| 75. Guthale Rohidas Bhikaji | 117. Sharma Nimai Chandra |
| 76. More Vasant Dagaji | 118. Daspute Balchandra Vishwanath |
| 77. Ahire Eknath Fakira | 119. Kadbhane Punja Rajaram |
| 78. Kadam Chndhu Ramchandra | 120. Nimbalkar Anna Saheb |
| 79. Kshirsagar Vitthal Ganpat | 121. Patil Prabhakar Vanket |
| 80. Rajput Dhamu Surshing | 122. Gaikwad Chandrakant Gandha |
| 81. LahangeBhaskar Rambhau | 123. Kanade Rajendra Shankar |
| 82. Pawar Tulshiram Kashinath | 124. Thair Shaikh Abadi |
| 83. Kongari Vincent Marthin | 125. Avhad Santosh |
| 84. More Pandurang Khanderan | 126. Wani Shehlala Arun |
| 85. Lande Baban Deoram | 127. Jain Mahandrakumar Harkchand |
| 86. Gaikwad Bapu Sadhipan | 128. Sonwane Prakash Namdeo |
| 87. Shingade Chabu Bhimrao | 129. Kadam Parshuram Balkrishna |

130. Tajanpure Sunil Khanderao
131. Dudhe Suman Gobind
132. Jagtap Bharat Murlidhar
133. Chajed Ashokkushal Chand
134. Gasavi Atmaram Ashrubha
135. Bhandare Navnath Namdeo
136. Sutar Hanumant Kashinath
137. Dhikale Santosh Rajaram
138. Mahale Uddhav Janardhan
139. Kankariya Subhash Babulal
140. Kolapkar Sharada Ramesh
141. Jagtap Kailash Guman
142. Ahire Virendrasing Sardar
143. Prihar Gajendra Baldas
144. Barve Bandhu Ramchandra
145. Mahajan Sanjay Ambadas
146. Jadhav Mahendra Pandhari
147. Lokhande Dilip Madhav
148. Salve Sidharth Sadhu
149. Kothari Majoj Chandmal
150. Arote Vllaya Eknath
151. Shaikh Abid Haroon

Horticulture Deptt.

1. Ambadas Hari Korde
2. Chindu Dhondiram Bhongade
3. Sashinath Murlidhar Jadhav
4. Shripat Ramchandra Gaikawd
5. Arun Damodhar Gholap
6. Parbat Soniram Kokate
7. Mohan Nathu Pagare
8. Prakash Murlidhar Gaikwad
9. Bhausahab Pundlik Aragade
10. Laxmibai Gangaram Ahire
11. Tarabal Sampat Nikam
12. Sakhubai Shankar Wagh
13. Reshmabai Sakharam Mahale
14. Anjanabai Bhima More
15. Mahadu Kashinath Pradhan
16. Dinkar Mohram Potinde
17. Dinkar Punja Satale
18. Yaday Mahadu Bhoj
19. Gangadhar Eknath Lahange

20. Shankar Chandrakant Shingade
21. Raghunath Dhondiram Gangurde
22. Santu Pandu Kadale
23. Rangnath Rambhau Lahange
24. Murlidhar Ramji Waghire
25. Ravsaheb Rangnath Chandore
26. Gangaram Trambak Nisal
27. Pandurang Chimna Raut
28. Trambak Kashinath Bhor
29. Nanubai Shankar Gaikwad
30. Gangugai Nivrutti Shardul
31. Bhagubai Sitaram Dalvi
32. Tanhubai Ramdas Dhuh
33. Lilabai Parshuram Bhoi
34. Hausabai Baburao Gangurde
35. Sopan Fakira Pithe
36. Walu Tukaram Jondhale
37. Bhima Laxman Bendkule
38. Bhaskar Mahadu Chaudhari
39. Shivaji Chandrabhan Jadhav
40. Shrawan Popat Watane
41. Anna Bhikaji Shardul
42. Jagannath Bhimaji Kore
43. Balu Kachru Gangurde
44. Rangnath Shankar Mahale
45. Shivaji Shankar Pawar
46. Vijay Santosh Raut
47. Shravan Deoram Navghire
48. Ramdas Popat Watate
49. Ganpat Jairam Hengade
50. Vishnu Punja Pawar
51. Nivrutti Walu Malode
52. Sudam Kushba Tarle
53. Kashnath Deoji Waghmare
54. Shatabai Sahadu Ahire
55. Vimalbai Shankar Gangurde
56. Zunabai Laxman Bhavan
57. Yamunabai Chandrakant Jadhav
58. Gulab Vishnu Khetade
59. Trambak Ramji Gangurde
60. Vithal Laxman Korde
61. Arjun Bhimaji Bhandare

62. Dilip Baburao Bagul
63. Nndu Warnan Gaikwad
64. Shivaji Raghunath Tongare
65. Sampat Murlidhar Aher
66. Madhukar Ganpat Jadhav
67. Tuishiram Dada Jadhav
68. Sankar Murlidhar Ahre
69. Pandharinath Sitaram Mahale
70. Yaswant Tukaram Mahale
71. Dilip VVaman Pagar
72. Rangnath Murlidhar Chaudhari
73. Subhas Genda Panpatil
74. Dattu Yashwant Shrikhande
75. Laxman Sahadu Satale
76. Bhaulal Laxman Wagh
77. Vishnu Laxman Bendkule
78. Ramu Punklik Kale
79. Ashok Namdeo Hire
80. Vishwanath P. Shingade
81. Baban Rambhaji Adhav
82. Rajubai Karbhari Barkale
83. Prabhakar Rajaram Thorat
84. Mangalbai Rajendra Thakare
85. Dhondiram Nana Pawde
86. Kausabai Vishram Gaikwad
87. Hirabai Chabu Gabale
88. Ramji Dhanaji Loknar
89. Sunil Bhaskar Chaudhari
90. Rakesh Narayan Vidhate
91. Surendra Ranagnath Pardeshi
92. Keshav Jagannath Chaudhari
93. Devshingh Bhima Bagul
94. Ramnath Ranoba Zhade

Maintenance & Aircraft cleaning/depainting work

1. Sharad Shankar Ptambare
 2. Ramu Kondoji Mali
 3. Tanaji Bhimaji Gaikawad
 4. Raman Gopal Vaidhya
 5. Dilip Popat Bhalerao
 6. Ramesh Ashok Wawle
 7. Ramkisan Vishram Lokhande
 8. Muktar Chand Attar
 9. Shashikant Santosh Iste
 10. Milind Jaywant Salve
 11. Subhash Punjaji Pawar
- Garbage contract—Factory work.**
1. Nitin Jagannath Mandale
 2. Sanjay Mahadev Shelar
 3. Kisan Narayan Kedare
 4. Sanjay Nandu Sonwane
 5. Babaji Punjaji Jadhav
 6. Dattaray Honaji Gawali
 7. Serpuddin jamalludin Shaikh
 8. Ramesh Bajirao Ahre
 9. Prakash Jagannath Jagtap
 10. Kashinath Pandharinath Kedare
 11. Devanand Shidhar Kale
 12. Anant Jagannath Dhikale
 13. Shahebrao Bhimrao Ahire
 14. Sukadeo Tudaram Bodke
 15. Yusuf Gafure Shaikh
 16. Rajendra Sadashiv Chandramore
 17. Ashok Subhash Bankar
 18. Shukat Gulamali Sayyad
 19. Anil Ramrao Kandekar

2. After receipt of the reference both parties were served with notices. They appeared through their representatives. The second party Union filed its statement of claim at Ex-5. According to the union, the first party is Central Govt. undertaking having more than 5000 permanent employees. They have employed some 700/800 employees as casual workers. Some of them were employed since 1976. Many of them retired due to superannuation. Some of them are employed since 1984. They are employed in various departments of the first party. They are doing work of perennial nature as like the regular workers. Till 1995 they were branded as casual workers and company was paying them even less than minimum wages. Till 1995 their Provident Fund was credited with the company's Trust. In the year 1995 company decided to separate them from company P.F. and opened P.F. Account with Regional P.F. Commissioner, Nashik. These workmen are the members of the union since prior to 1995. Since 1995 company started paying them minimum wages. About 85 workmen were working in canteen till 2001. Till then the canteen was run by the company. In 2001 they handed over the canteen to contractor and the workmen therein were shifted to factory in regular production work. Some of these workmen are working in Transport Department. Some are in Storing Fixtures for the purpose of jobs. Some were engaged in

Maintenance Deptt., Sanitary Deptt., Electrical Deptt., Hospital, Horticulture, Aircraft Cleaning and Garbage. There are also permanent workmen working in these departments. Their work is of perennial nature. However the company is not paying them pay and wages at par with the permanent workmen. Since 1995 company has started inducting contractors. In fact the contractors are bogus and camouflage merely to deprive these workmen from getting their legitimate right of permanency. In fact all these workmen were directly working under the supervision of officials of the company. Their wages were paid by the company. They were given subsidized canteen facility, bus facility and hospital facility of the company. The contractors are nominal and bogus. The union requested the company to make these workmen permanent in the service and to pay them the pay and extend other facilities at par with the regular and permanent employees to which company refused. Therefore the union has raised industrial dispute. As conciliation failed, on report of ALC@, the Central Labour Ministry sent the Reference to this Tribunal. Union therefore prays for declaration that, the contract labour system in the company is not genuine. It is mere paper arrangement. They also pray that the company be directed to make them permanent and pay them wages with all other facilities at par with the regular employees of the first party company and they be absorbed in the services of the company.

3. The first party resisted the statement of claim vide its written statement at Ex-7. According to the first party, the Reference in the present form is not tenable in law. They further contended that the union is not recognized at the Ojhar unit of the company. The dispute raised by the union is not a bona fide dispute. It is raised merely to gain foothold in the establishment of the company. There is no dispute between the permanent workers with the management. The members of the union are not employees of the company. There is no employer-employee relationship between them. Therefore the dispute is not tenable. The union has no locus-standi to espouse the alleged cause of contract labourers. The members of the union are all contract labourers and thus dispute is not tenable. Even the contract labourers have no dispute with the management. The first party is a Govt. company and cannot recruit employees without following the recruitment process. Such a back door entry is not permissible in the Public Undertaking. The employer cannot be directed to create vacancy. Without vacancy there cannot be direction for regularisation. The contractors are not sham or bogus. On the other hand they are genuine contractors. They are providing services to some other companies also. The service conditions of contract labourers are governed by terms of contract of employment. They cannot raise industrial dispute of this nature. The contractors have maintained all the documents in respect of the contract labourers. Dispute in some other establishment raised by the contract labourers came to be

rejected. By amendment the first party further contended that many of the contract labourers have ceased to perform their duties on account of resignation, retirement, etc. The contractors have given information to that effect and such persons are not entitled to any relief and their name required to be deleted from the list of workmen. Management therefore submitted that the second party be directed to furnish the list of workmen who have been ceased to perform their duties in the establishment. They denied all the allegations in the statement of claim. They denied that these workmen are recruited by them as casual labourers. They denied that subsequently they have inducted the contractors merely to deprive them from getting the benefits under labour legislation. They have denied that the labour contracts are sham and bogus and mere camouflage or a mere paper work to deprive these workmen from getting the benefits of permanent employees. Thus they pray that the reference be dismissed with cost.

4. The second party union has filed rejoinder at Ex-8. They have replied the new points raised by the first party in their written statement. They have denied all the allegations made in the written statement and reiterated the contents in the statement of claim.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr.No.	Issues	Findings
1.	Whether there exists employee-employer relationship between the workmen under reference with the first party company?	Yes.
2.	Whether the labour contracts are sham, bogus and mere paper work?	Yes.
3.	Whether the workmen under reference are entitled to be regularised in the services of the first party?	Yes.
4.	What relief the workmen are entitled to?	As per final order.

REASONS

Issues Nos. 1 & 2:—

6. Both these issues are interconnected. Therefore in order to avoid repetition of discussions, they are discussed and decided simultaneously. In this respect it was submitted on behalf of the first party that the workmen under reference are contract labourers therefore they cannot raise the industrial dispute.

7. The Ld. Adv. for the first party further submitted that all the contracts are genuine. They have issued advertisements in different news papers calling upon the

tenders from contractors. The contractors have submitted their tenders. Officials of the first party have examined all the documents of the contractors such as their registration, partnership agreement, income tax return of the firm for the last three years etc. Thereafter the company has accepted the lowest tender. The contract was for 12 months. All the contractors are duly registered and have complied with all the documents. The documents pertaining to the contractors are placed on record and are exhibited and they are not disputed even by the representative of the second party. In the circumstances, it is submitted that the contractors cannot be called mere paper work, sham or bogus as has been contended on behalf of the second party. Further it was also pointed out that the WW-1 Mr. Dilip Pagare has admitted in his cross at Ex-62 that, there is no employer-employee relationship of the workman with the company. In this respect I would like to point out that this stray admission seems to have given inadvertently or due to some misunderstanding. The workman is not a learned person he is educated only up to sixth std. He is almost illiterate and not very wise to reply cleverly. Therefore his reply need not be treated as admission as such to record the finding on the point. In this respect I would like take in to account the pleadings, other evidence and all the circumstances on record. It is the throughout case of the second party that they are the employees of the company and contractors are inducted subsequently and after 1995 merely to deprive them from getting their legitimate rights. In short all the facts, circumstances and evidence cannot be washed away by this stray admission. Therefore this admission or any admission of like nature need not be given undue importance.

8. In this respect it was submitted on behalf of the second party that they are not disputing the eligibility and competency of the contractors. They are also not disputing the documents of the contractors. They may be duly registered, etc. According to them these workmen were recruited directly by the first party since 1984 and some of the workmen were also employed since 1976. Many of them retired. All of them were recruited directly by the company. Till 1995 first party was making their payments directly and their P.F. was also credited with the Provident Fund Trust of the company.

9. Therefore according to them they are direct employees of the first party and the contractors are inducted subsequently. They are mere name lenders. It is their case that, the labour contracts are sham, bogus and mere paper work. The Ld. Adv. for the second party further submitted that in such circumstances such workmen who are shown contract labourers by the company can very well raise industrial dispute. In support of his argument Ld. Adv. resorted to Apex Court ruling in **Steel Authority of India Ltd. V/s. Gujarat Mazdoor Panchayat 2004 II LLJ 970** wherein the Hon'ble Court observed that:

"The position of law, which emerges from the reported decisions of the Supreme Court is that workmen working under a contractor are entitled to raise a demand that they should be declared as workmen of the principal employer. It is always open to the workmen concerned to place materials before the Industrial adjudicator to show that the contract between the principal employer and the contract labourer is sham or not genuine and claim declaration that they were always the employees of the principal employer and are entitled to appropriate service conditions."

10. Relying on the above Apex Court Judgement, Hon'ble Bombay High Court in **Sudarshan Chemical Industries Ltd. V/s. Labour Commissioner & Ors (2013 III CLR 530)** observed that;

"Where contract was found sham and nominal rather a camouflage in which case contract labourer working in the establishment of principal employer was held in fact and in reality the employee of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the court pierced the veil and declared the contract position as a fact at the stage after employment of contract labour stood prohibited."

In para 6 of the judgment by referring the Apex Court ruling, the Hon'ble Court further observed that;

"Thus, in substance, the Apex Court held that when the contract is found to be sham or camouflage, question of abolition of contract labour does not arise inasmuch as in reality, contract does not exist. In such case the employees who are allegedly shown as employees of the contractor are in fact the direct employees of the principal employer."

11. In this respect Ld. Adv. for the first party submitted that Hon'ble Bombay High Court in **Writ Petition No. 1580 of 2012 Association of Engineering Workers V/s. Richardson & Cruddas (1972) Ltd.** in the similar circumstances and evidence upheld the finding of the Tribunal saying that, it has rightly decided that the 24 workmen therein were contract labourers and were not the employees of the first party. In this respect I would like to point out that the Hon'ble Court in this judgment para 8 thereof in respect of the evidence therein has observed that;

"The evidence of Shri Mohite as indicated above is too skeletal. In the statement of claim it is not mentioned that, when the workers were engaged for the first time and the dates of their termination. It is in the evidence that an annexure is to be sought to be produced. It is well settled that the evidence without pleading is of no avail. In the light of the

evidence which is on record, in my view the finding of fact recorded by the Tribunal cannot be faulted with."

12. In this respect it is rightly pointed out on behalf of the second party that, in the case at hand, it is specifically pleaded in the statement of claim that these workmen are working since 1984. Some of them have even retired who were working since 1976. It is specifically contended in the statement of claim that, since 1995 onward, the first party started inducting the contractors. In this case second party has not admitted that they are the employees of the contractors. On the other hand they have given the details since when they are working with the first party. In the circumstances the ratio laid down in the above referred ruling is not applicable to the set of facts of the case at hand.

13. In this respect Id. Adv. for the second party pointed out that, specific question was asked to MW-1, Mr. Anil Vaidya in his cross examination (Ex-68). He replied that he does not remember the exact date when they were registered under Contract Labour (Regulation and Abolition) Act 1972. He also replied that he does not know as to whether all these workmen are working with HAL since much prior to their registration under the said Act and also prior to the license of the contractor. He also does not know as to whether till 1995 P.F. amount of these workmen was deposited in the fund of the company. The documents in respect of Labour Contracts are of recent years and after 1995. It indicates that initially since 1976 up to 1995, the workmen were recruited directly by the company and they were under the full control of the company for all purposes. It seems that in 1995 company has registered under Contract Labour (Regulation and Abolition) Act, 1972 and thereafter they have started inducting contractors. The contractors were also inducted periodically for 12 months. However the workmen are the same working continuously for years together. Many of them are working since 1984. Some of them are recruited in 1986 and thereafter. All of them were recruited by the company and the company was paying them directly. The first party use to credit their P.F. in the PF Trust Account of the company. The contractors were inducted subsequently. Every 12 months contractors were changed, however the same workmen are working continuously for number of years. Some of them are even retired, who were recruited in the year 1976. All these facts indicate that the first party has inducted contractors subsequently merely to deprive these workmen from getting their legitimate protection under the Labour Legislation including the right of permanency.

14. In short in the light of above discussion and for following facts, I hold these workmen are the employees of the first party. (1) Initially since 1976 the company was recruiting the employees directly for various works mentioned above. These employees were recruited since

1984 onwards and the company started inducting the contractors since 1995 onwards. (2) Till 1995 the company was paying the wages to the workers directly. (3) The contractors were changed periodically whereas the same workmen are working continuously. (4) Till the year 1995 the P.F. of these employees was credited in the P.F. Trust fund of the first party company. Since 1995 they opened P.F. Account with Regional P.F. Commissioner, Nashik. (5) The various categories of works mentioned above are all of perennial nature. (6) Engaging workmen for work of perennial in nature on contract basis amount to unfair labour practice. The management can be held guilty for the same. (7) the work of these workmen is being supervised by the officials of the company. All these circumstances indicate that these workmen are not employees of the contractors but are the employees of the first party.

15. In the light of above discussions I hold that there exists employer-employee relationship between the first party and the second party employees. Consequently I also hold that the periodical labour contracts of various contractors with the first party are found to be sham, bogus and mere paper work. Accordingly I decide these issues nos.1 & 2 in the affirmative.

Issue no. 3

16. Now in respect of regularisation, the Id. adv. for the first party submitted that the workman herein cannot be regularised in public service as neither they have been selected by following the selection procedure nor have complied with the requisite qualification for the post. In support of his argument the Id. adv. for the first party cited Apex Court ruling in **Secretary, State of Karnataka V/s. Uma Devi 2006 II CLR 261** wherein Hon'ble Court on the point held that, temporary or contract labourers cannot be regularised in public service, it would amount to back door entry as they are not recruited by following the recruitment process. In this respect the Id. adv. for the second party submitted that in that case the workmen had sought for abolition of contract labour system and for regularisation of the contract workmen which cannot be allowed. Furthermore in the case at hand the workmen herein are working for the first party continuously for more than 15/20 years. The management has violated the principle of "equal pay equal work". Moreover the works performed by these workmen are of perennial nature and required to be performed by the permanent employees. Engaging contract workers to do such types of works, amount to unfair labour practice. Management herein has not even taken care to seek for permanent posts of Sweepers, Drivers, Cooks, Watchmen etc. though their work is of perennial in nature. In this backdrop the ratio in the above referred ruling is not attracted to the set of facts of the present case wherein the workmen are not employees of contractors but are the employees of first party and they are doing the work of perennial nature for more than 15/20 years. On the

point Id. adv. for the second party submitted that as the various contracts entered in to are found to be sham and bogus and the workmen are found to be the employees of the first party and they are working continuously for years together, therefore these workmen are entitled to get pay and allowances at par with regular employees in the same cadre. In support of his argument the Id. adv. for the second party cited Apex Court ruling in **UP Electricity Board V/s. Pooranchandra Pandey and Ors. 2008 (115) FLR 1172** wherein in similar circumstances the Hon'ble Court observed that:

"...In our opinion the decision in Uma Devi's case (Supra) is clearly distinguishable. The said decision cannot be applied to a case where regularization has been sought for in pursuance with article 14 of the Constitution."

17. The Id. adv. for the second party further submitted that in the light of facts, circumstances and the above Apex Court ruling direction is required to be issued to the employer to regularize the services of these workmen. In support of his argument, the Id. adv. for the second party also cited Apex Court ruling in **Steel Authority of India Ltd. & Ors. V/s. National Union Waterfront Workers & Ors. 2001 III CLR 349 SC** wherein in para 121 (5), the Hon'ble Court observed that;

"If the contract is found to be not genuine but a mere camouflage, the so called contract labourer will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labourer in the concerned establishment subject to the conditions as may be specified by it for it that purpose....."

18. In the light of the above facts, circumstances and the ruling referred herein above I am of the opinion that, the workmen under reference are entitled to be regularized in the services of the first party and entitled to get pay and allowances at par with the regular workers in the same cadre in the company or in any public under taking. The work performed by these workmen is of perennial nature and it was the duty of the management to get these posts sanctioned, from the concern authority. Neither Tribunal is required to give direction to create posts nor first party should continue with the present arrangement of bogus contractors. The work of perennial nature should not be allowed to be performed by contract workers. It is not only exploitation of poor class in the society but also amount to unfair labour practice. In this backdrop I hold that the union is entitled to the reliefs prayed for. Accordingly I decide this issue no. 3 in the affirmative and proceed to pass the following order:

ORDER

1. The reference is allowed with no order as to cost.
2. The contracts between first party with various contractors are declared as sham and bogus.

3. The workmen under reference are declared to be the employees of the first party.
4. The first party is directed to regularize these workmen in their respective services and pay them pay and allowances at par with the regular workers of the respective cadres working in any other public undertaking, from the date of their respective appointments (excluding the two years period of probation).
5. The first party is directed to pay the 50% back arrears in cash within 6 months from the date of receipt of copy of award and rest of the arrears be credited in their respective Provident Fund Accounts.

Date: 09.02.2015

K.B. KATAKE, Presiding Officer

नई दिल्ली, 6 अगस्त, 2015

का.आ. 1616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नार्थ डेल्ही म्युनिसिपल कौंसिल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय.¹ डेल्ही के पंचाट (संदर्भ सं० 56/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/08/2015 को प्राप्त हुआ था।

[सं० एल-42011/139/2014-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 6th August, 2015

S.O. 1616.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 56/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the industrial dispute between the employers in relation to the management of the North Delhi Municipal Council and their workmen, which was received by the Central Government on 05/08/2015.

[No. L-42011/139/2014-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No. 56/2015

The Secretary,
New Delhi Nagar Palika Karamchari Union (3574),
B-58/85, Rama Road,
New Delhi-110015

... Workman

Versus

The Commissioner,
North Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi

... Management

AWARD

Central Government, *Vide* letter No. L-42011/139/2014/IR(DU) dated 19.01.2015, referred the following industrial dispute to this Tribunal for adjudication:

"Are those category of the employees entitled to receive pay and allowances as per Shiv Shankaran Committee Report (SS Scales) who are at present not in receipt of pay and allowances as per the said Committee Report? If yes, with effect from which date.

2. On receipt of the above reference, notice was sent to the workman union as well as the management. None appeared on behalf of the claimant union. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

3. Since the claimant union has neither put in their appearance nor have they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the industrial Disputes Act, 1947, for publication.

Dated: July 14, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 6 अगस्त, 2015

का.आ. 1617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल दूरदर्शन केन्द्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट संदर्भ सं(125/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/08/2015 को प्राप्त हुआ था।

[सं एल-42012/13/2012-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 6th August, 2015

S.O. 1617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 125/2012) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Delhi now as shown in the Annexure in the industrial dispute between the employers in relation to the management of the Director General, Doordarshan Kendra

and their workman, which was received by the Central Government on 05/08/2015.

[No. L-42012/13/2012-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 1, KARKARDOOMA COURT COMPLEX, DELHI**

ID No.125/2012

The President,
Doordarshan Program Casual Employees Association
(Regd.),
Registered Office C 210, West Vinod Nagar
Near Primary School,
New Delhi

... Workman

Versus

The Director General,
Doordarshan Kendra,
Mandi House,
New Delhi-110001

... Management

AWARD

Brief facts giving rise to the present reference are that Shri Bhupinder Singh Sondhi, claimant herein, raised an industrial dispute with the averments that he was initially employed by the management as Floor Artiste on 05.10.1983 and continued in service without any break to the entire satisfaction of the management. The management has been adopting unfair labour practice of engaging and continuing the workers as casuals, giving artificial breaks in their service so as to continue them as casual workers for years together. There are allegations that some of the casual workers of the management filed OAs in Central Administrative Tribunal (CAT) claiming regularization in service and challenging the aforesaid practice of employing daily wagers without making them regular and CAT, *vide* its judgement dated 05.10.1990 in OA No.563 of 1986 passed order directing the management to frame a policy for regularization of the casual workers in service.

2. Thereafter, the management framed a policy for regularization of the casual workers in the year 1992 and 1994. The management also issued list of casual workers covered under the scheme and name of the claimant herein also appeared in the said list. Management has regularized services of several workmen, including Muklinder Rai Sinha, Anil Thakur, Ashok Kumar etc. whose names are mentioned in para 7 of the statement of claim. While regularizing services of the other workmen in 1992, the claimant herein was dropped allegedly on the grounds that he was underage as on 05.10.1983, *i.e.* initial date of his appointment.

3. In another OA No.2241 of 1999, which is also regarding regularization of service, management took a stand that the claimant herein, alongwith other workers, find mention in the list of eligible candidates and they will be regularized as per their seniority. CAT also directed the management to expedite the process of regularization.

4. Pursuant to the above order, fresh list of candidates *vide* OM No. 2/120/98-SL dated 08.08.1999 was issued which also contained the name of the claimant herein. The claimant also made specific reference to other similar cases decided by the Hon'ble CAT wherein workmen were denied regularization and seniority was also not accorded to them at their respective places.

5. Claimant herein before joining the management was working with Abhinay Theatre Society (Regd.) and had submitted experience certificate issued by the Society. Management, at that time, did not raise any objection and accepted the same. Letter dated 22.09.2003 was, also written by the Deputy Director (Admn.) to the Director General, Doordarshan, followed by another letter dated 30.09.2003 to re-examine the case of the claimant herein for regularization. Neither any action was taken by the management nor any reason has been conveyed to the claimant for denial of regularization. This action of the management in not regularizing the workman in service is highly discriminatory, particularly when the management has regularized services of the workmen who were junior to the claimant, herein.

6. Since the matter could not be resolved, as such the workman approached the Union Government, who made reference to this Tribunal in the following manner:

"Whether action of the management of Doordarshan Kendra, New Delhi in not regularizing the services of the workman Shri Bhupinder Singh Sondhi is illegal and unjustified. If so, what relief the workman is entitled to?"

7. After consideration of statement of claim by the workman, matter was listed for filing written statement on behalf of the management. It is clear from the various orders passed by this Tribunal that case for regularization of service of the claimant was in progress and management sought adjournments from time to time, for regularization of services of the claimant. It is clear from order dated 10.06.2015 that Shri R.K. Dhawan informed this Tribunal that management is ready to regularize services of the claimant and he has also filed copy of order No.16/2015-SI(A) dated 06.05.2015 as well as subsequent letter dated 14.05.2015 which shows that management is willing to regularize services of casual artists under the regularization scheme 1992 and 1994.

8. Thereafter, claimant herein filed application dated 06.07.2015 seeking withdrawal of the present petition in view of the fact that the management was ready to offer

appointment on regular basis to the workman herein. The management has put a condition that for regularization, the workman has to first withdraw his case. Thus, the management has approved to regularize services of the claimant herein in accordance with the scheme of regularization of 92 and 94. No reply to the above application was filed by the management for the simple reason that the management is ready and willing to regularize services of the claimant herein in terms of its policy of the year 92-94. Since the claimant did not want to pursue the reference before this Tribunal for the reason the management was ready and willing to regularize his services, as such statement of the claimant regarding withdrawal of the case was separately taken.

9. It is pertinent to note that under the Industrial Disputes Act, 1947 (in short the Act), there is no specific provisions relating to withdrawal of reference made by the Government in terms of Section 10, sub-section 2A of the Act. However, the Tribunal can take cognizance of the facts mentioned in the application dated 06.07.2015.

10. In view of the averments made in the application dated 06.07.2015 and the fact that the management is ready and willing to regularize the services of the claimant in terms of its policy of the, year 92 and 94, there is no need to pass an award on merits. Contents of the application dated 06.07.2015 will form an integral part of the award. Moreover, the claimant herein is not interested in pursuing the present case. Hence, an award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947 for publication.

A.C. DOGRA, Presiding Officer

नई दिल्ली, 6 अगस्त, 2015

का.आ. 1618.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आर्कियोलॉजिकल सर्वे ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या 36/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 06/08/2015 को प्राप्त हुआ था।

[सं० एल-42012/119/99-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 6th August, 2015

S.O. 1618.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 36/1999) of the Industrial Tribunal, Kota now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Archaeological Survey of India and their workman, which was received by the Central Government on 06/08/2015.

[No. L-42012/119/99-IR(DU)]

P. K. VENUGOPAL, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोट, (राज०)
पीठासीन अधिकारी- श्रीमती अनिता शर्मा, आर०एच०जे०एस०
निर्देश प्रकरण क्रमांक औ०न्या० (केन्द्रीय)-36/1999
दिनांक स्थापित: 3/12/99

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश
क्र० एल-42012/119/99-आईआर(डीयू) दिनांक
19/11/1999

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद
अधिनियम, 1947

मध्य

श्रीमती प्रेमबाई पत्नी स्व० मोडसिंह द्वारा श्रम सलाहकार, डडवाडा,
कोटा जंक्शन, कोटा

— प्रार्थीया श्रमिक

एवं

अधीक्षण पुरातत्वविद, भारतीय पुरातत्व सर्वे विभाग,
मानसरोवर, जयपुर (राजस्थान)

— अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि:- श्री एन०एस० चौधरी
अप्रार्थी नियोजक की ओर से प्रतिनिधि:- श्री जितेन्द्र सिंह
अधिनिर्णय दिनांक 19/12/14

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक
19/11/1999 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद
अधिनियम, 1947 (जिसे तदुपरांत “अधिनियम” से सम्बोधित किया
जावेगा) की धारा 10(1)(घ) व उपधारा 2(ए) के अंतर्गत इस
न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

“Whether the termination of services of Smt. Prem
bai W/o Late Shri Modsing by the Archaeological
Department from 26/11/97 is legal & justified? If not,
to what relief the workman is entitled?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरांत
पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थीया की ओर से अपना क्लेम स्टेटमेंट न्यायाधिकरण के
समक्ष प्रस्तुत कर व्यक्त किया गया है कि प्रार्थीया के प्रति मोडसिंह
अप्रार्थी के अधीन स्मारक परिचर के पद पर चित्तौड़ फोर्ट में कार्यरत थे
जिन्हे अकारण ही अप्रार्थी ने दिनांक 5/4/93 से सेवा से निकाल दिया था
जिसका वाद सी०ए०टी० जोधपुर में लम्बित था। बीमारी के कारण दिनांक
27/7/94 की प्रार्थीया के पति का देहान्त हो गया व प्रार्थीया को प्रार्थीया
के पति के स्थान पर अप्रार्थी ने दिनांक 8/9/96 को नौकरी पर रख लिया

था, परन्तु बिना कोई कारण बताये व बिना कोई नोटिस या नोटिस वेतन
व क्षतिपूर्ति-भत्ता अथवा छंटनी मुआवजा दिये प्रार्थीया को अप्रार्थी ने
दि० 26/11/97 से मौखिक आदेश से नौकरी से निकाल दिया। प्रार्थीया
द्वारा अनेकों बार अप्रार्थी से नौकरी पर रखे जाने की प्रार्थना की गयी
परन्तु उसे नौकरी पर नहीं रखकर उनसे कनिष्ठ श्रमिकों को अप्रार्थी ने
नौकरी पर रख लिया। अप्रार्थी ने श्रमिकों की वरिष्ठता सूची नहीं बनायी
व औ०वि० नियमों के नियम 77 की अवहेलना की। प्रार्थीया ने अप्रार्थी
के अधीन चित्तौड़गढ़ फोर्ट में बारह कलेण्डर माह में 240 दिन से अधिक
कार्य किया है, परन्तु प्रार्थीया को बिना नोटिस या नोटिस क्षतिपूर्ति भत्ता
दिये नौकरी से हटाकर अधिनियम की धारा 25-एफ के विपरीत कार्य
किया है जो नौकरी से हटाना अनुचित व अवैध है। परिणामतः प्रार्थीया
श्रमिक द्वारा क्लेम स्टेटमेंट प्रस्तुत कर सेवा की निरन्तरता, सम्पूर्ण वेतन
व समस्त लाभों सहित सेवा में पुनः बहाल किये जाने के अनुरोध की
प्रार्थना न्यायाधिकरण से की गयी है।

4. उपरोक्त क्लेम स्टेटमेंट का जवाब प्रस्तुत कर अप्रार्थी नियोजक
की ओर से व्यक्त किया गया है कि प्रार्थीया के पति मोडसिंह को अप्रार्थी
द्वारा किसी नियमित स्थाई/अस्थायी (यथा स्मारक परिचर) पर भर्ती
नियमों के अंतर्गत नियुक्त नहीं किया गया था अपितु प्रार्थीया का पति
प्राचीन संस्मारक स्थल तथा पुरावशेष अधिनियम, 1958 के अंतर्गत
केन्द्रीय सरकार द्वारा संरक्षित स्मारक चित्तौड़गढ़ दुर्ग के पूर्णतया आकस्मिक
एवं अस्थायी प्रकृति के कार्य यथा साफ-सफाई आदि हेतु अकुशल
श्रमिक (बेलदार) के रूप में मस्ट्रोल पर दिहाड़ी पर लगाया गया था।
अप्रार्थी ने प्रार्थीया के पति को सेवा से निकालने से इंकार किया है अपितु
स्वयं श्रमिक मोडसिंह द्वारा स्वेच्छा से दि० 5/4/93 के बाद से कार्य
छोड़कर चला जाना व्यक्त किया है। श्रमिक मोडसिंह ने केन्द्रीय
प्रशासनिक अधिकरण, जोधपुर बैंच के समक्ष वर्ष 1993 के समक्ष एक
प्रार्थना-पत्र पेश किया जो प्रकरण ओ०ए० सं० 333/93 मोडसिंह बनाम
भारत संघ व अन्य के नाम से सूचीबद्ध हुआ। श्रमिक मोडसिंह की मृत्यु
के पश्चात् प्रार्थीया ने उक्त बैंच के समक्ष एक प्रार्थना-पत्र प्रस्तुत कर
ओ०ए० सं० 333/93 में मोडसिंह का नाम हटाकर प्रार्थीया का नाम रेकार्ड
पर लेने हेतु आग्रह किया व केन्द्रीय प्रशासनिक अधिकरण ने उक्त
प्रार्थना-पत्र स्वीकार करते हुए मूल ओ०ए० सं० 333/93 में मोडसिंह का
नाम हटाकर प्रार्थीया प्रेमबाई का नाम रेकार्ड में अंकित कर लिया, परन्तु
केन्द्रीय प्रशासनिक अधिकरण, जोधपुर बैंच ने दोनो पक्षों की सुनवाई
करने के पश्चात् ओ०ए० सं० 333/93 श्रीमती प्रेमबाई बनाम भारत संघ व
अन्य में दिनांक 30/10/96 को निर्णय पारित करते हुए प्रार्थीया का
प्रार्थना-पत्र अस्वीकार कर दिया। प्रार्थीया को अप्रार्थी द्वारा उसके पति
के स्थान पर कभी भी नौकरी पर नहीं रखा गया, ना ही नियुक्ति दी गयी,
अपितु प्रार्थीया को प्रथमतया अप्रार्थी द्वारा प्राचीन संस्मारक पुरातात्विक
स्थल तथा पुरावशेष अधिनियम, 1958 के अन्तर्गत केन्द्रीय सरकार द्वारा
संरक्षित स्मारक -विजय स्तम्भ, चित्तौड़गढ़ दुर्ग के पार्किंग स्थल की
बाउण्ड्रीवाल पुनःनिर्माण के विशेष मरम्मत कार्य हेतु स्वीकृत प्राक्कलन
के समक्ष पूर्णतया अस्थायी एवं आकस्मिक प्रकृति के कार्य पर दि०
9/9/96 को कुली (अकुशल श्रमिक) के रूप में दिहाड़ी पर मस्ट्रोल
पर रखा गया था। प्रार्थीया द्वारा सहायक श्रम आयुक्त (केन्द्रीय), कोटा
के समक्ष दि० 16/11/98 को पेश किये गये प्रार्थना-पत्र में लिखित

कथन किया था कि उसे 1/7/96 को नौकरी पर रखा गया था जबकि अपने क्लेम स्टेटमेंट में प्रार्थीया दि० 8/9/97 को नौकरी पर रखा जाना कहती है। दोनों कथन विरोधाभासी एवं असत्य होना व्यक्त करते हुए प्रार्थीया का क्लेम स्टेटमेंट खारिज किये जाने की प्रार्थना की है। अप्रार्थी ने यह भी व्यक्त किया है कि अप्रार्थी संस्थान/विभाग द्वारा केन्द्रीय सरकार द्वारा संरक्षित स्मारक/स्थल के रख-रखाव तथा सांस्कृतिक धरोहर का बनाये रखने हेतु आवश्यकतानुसार स्वीकृत बजट को मध्य नजर रखते हुए विभिन्न स्मारकों के लिए स्वीकृत विशेष मरम्मत प्राक्कलन के समक्ष यथासमय उपलब्ध स्थानीय श्रमिकों को पूर्णतया अस्थाई एवं आकस्मिक प्रकृति के कार्य विशेष के लिए मस्ट्रोल पर आवश्यकतानुसार कुशल/अकुशल यथा-मैसन/बेलदार/कुली इत्यादि के रूप में दिहाड़ी पर रखा जाता है। ऐसे श्रमिकों को कार्य विशेष की समाप्ति अथवा किसी कारणवश कार्य बंद होने/रोकने अथवा श्रमिकों का कार्य संतोषजनक नहीं पाये जाने पर हटा दिया जाता है। अप्रार्थी द्वारा उक्त आकस्मिक प्रकृति के कार्य विशेष पर रखे जाने वाले श्रमिकों को किसी प्रकार का कोई नोटिस अथवा क्षतिपूर्ति भत्ता दिये जाने का कोई प्रावधान नहीं होना व्यक्त किया है। इस प्रकार अप्रार्थी ने प्रार्थीया श्रमिक को किसी नियमित, स्थाई/अस्थाई पद पर भर्ती नियमों के अन्तर्गत नियुक्त किये जाने से इन्कार किया है। अप्रार्थी ने उक्त मरम्मत कार्य तकनीकी कारणों से बन्द रहने के कारण प्रार्थीया श्रमिक को आगे कार्य पर रखा जाना संभव नहीं होना कहा है व उक्त दिनांक के पश्चात प्रार्थीया के लिए कभी अप्रार्थी के यहां आकस्मिक एवं अस्थाई प्रकृति के विशेष मरम्मत कार्य होने से इन्कार किया है। अप्रार्थी द्वारा अपने जवाब में प्रार्थीया श्रमिक द्वारा किसी भी कलेण्डर वर्ष में अप्रार्थी नियोजक के यहां 240 दिन अथवा उससे अधिक कार्य करने से इन्कार किया गया है तथा मस्ट्रोल पर रखे जाने वाले श्रमिकों की वरिष्ठता सूची बनाया जाना संभव तथा न्यायसंगत नहीं होना कहा है व दिनांक 26/11/97 से आगे विशेष मरम्मत कार्य तकनीकी कारणों से बन्द रहने के कारण उक्त दिनांक से आगे प्रार्थीया को काम पर रखा जाना संभव नहीं होना व्यक्त किया है। परिणामतः अप्रार्थी ने अपना जवाब प्रस्तुत कर प्रार्थीया श्रमिक द्वारा प्रस्तुत क्लेम स्टेटमेंट खारिज किये जाने की प्रार्थना की है।

5. साक्ष्य में प्रार्थीया श्रमिक ने स्वयं का तथा अप्रार्थी की ओर से सुरेश कुमार, कन्जरवेशन असिस्टेंट ग्रेड-II का शपथ-पत्र प्रस्तुत किया गया है जिनसे उभयपक्ष के प्रतिनिधिगण द्वारा एक-दूसरे के शपथ-पत्रों पर जिरह की गयी है। प्रलेखीय साक्ष्य में प्रार्थीया श्रमिक की ओर से प्रदर्श डब्ल्यू 1 व डब्ल्यू 2 प्रस्तुत कर प्रदर्शित करवाये गये हैं तथा अप्रार्थी पक्ष की ओर से एनेक्सर-1 लगा 3 पेश किये गये हैं, जिनका यथासमय उल्लेख किया जायेगा।

6. उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी गयी तथा पत्रावली पर उपलब्ध साक्ष्य व सामग्री का ध्यानपूर्वक परिशीलन किया गया।

7. प्रार्थीया श्रमिक के विद्वान प्रतिनिधि का तर्क है कि उसके पति के स्थान पर अप्रार्थी ने उसे नौकरी पर रखा था। प्रार्थीया ने अप्रार्थी के अधीन 12 कलेण्डर माह में 240 दिन से अधिक का कार्य कर लिया है परन्तु अप्रार्थी द्वारा प्रार्थीया को मौखिक आदेश से अधिनियम की धारा 25 - एफ की पालना किये बगैर नौकरी से हटा दिया। इस प्रकार प्रार्थीया

को सेवा से हटाना अनुचित एवं अवैध होना व्यक्त करते हुए प्रार्थीया को सेवा में निरन्तरता व समस्त वेतन परिलाभों सहित सेवा में बहाल किये जाने की प्रार्थना की है।

8. इसके विपरीत अप्रार्थी के विद्वान प्रतिनिधि का कथन है कि प्रार्थीया का पति मोडसिंह किसी स्थाई/अस्थाई पद पर भर्ती नियमों के अन्तर्गत नियुक्त नहीं किया गया था। प्रार्थीया को कभी भी उसके पति के स्थान पर नौकरी पर नहीं रखा गया, अपितु पूर्णतः अस्थाई एवं आकस्मिक प्रकृति के कार्य पर दि० 9/9/96 को कुली (अकुशल श्रमिक) के रूप में दिहाड़ी पर मस्ट्रोल पर रखा गया था। प्रार्थीया श्रमिक को निर्धारित भर्ती प्रक्रिया तथा भर्ती को नियमानुसार किसी भी स्वीकृत अथवा रिक्त पद पर नियुक्ति प्रदान नहीं की गयी थी, ना ही प्रार्थीया ने अप्रार्थी नियोजक के यहां 240 दिवस या उससे अधिक का कार्य किया है, ऐसी स्थिति में प्रार्थीया श्रमिक अधिनियमान्तर्गत कोई अनुतोष प्राप्त करने की अधिकारिणी नहीं है।

9. प्रार्थीया ने न्यायाधिकरण के समक्ष साक्ष्य में प्रस्तुत किये गये अपने शपथ-पत्र में स्वयं को अपने पति के स्थान पर अप्रार्थी द्वारा दैनिक वेतन भोगी श्रमिक के रूप में 35/- रु प्रतिदिन दर से वेतन पर नौकरी पर रखना व्यक्त किया है तथा यह भी व्यक्त किया है कि प्रार्थीया ने दि० 8/9/96 से 30/11/97 तक लगातार कार्य किया है। इस साक्षी ने अपनी जिरह में व्यक्त किया है कि इसको अपनी स्वयं की काम करने की तारीख याद नहीं है, परन्तु इसने पांच साल पहले दो साल तक काम किया था। अप्रार्थी की ओर से प्रस्तुत साक्षी सुरेश कुमार ने अपने शपथ-पत्र की जिरह में प्रार्थीया द्वारा दि० 8/9/96 से 26/11/97 तक स्वयं के विभाग में कार्यरत होना स्वीकार किया है व प्रार्थीया को न्यूनतम दैनिक वेतन भोगी के रूप में भुगतान किया जाना व्यक्त किया है। इस साक्षी ने मुख्य परीक्षण में साक्ष्य में प्रस्तुत किये गये अपने शपथ-पत्र में दि० 9/9/96 से 26/11/97 तक लगातार स्वयं के नियोजन में कार्य करने से इन्कार किया है तथा उक्त अवधि में किसी भी वित्तीय वर्ष में 240 दिवस कार्य करने से भी इन्कार किया है। इस तथ्य को सिद्ध करने का भार कि श्रमिक द्वारा निरन्तर 240 दिन तक नियोजक के नियोजन में कार्य किया गया है, हमेशा स्वयं श्रमिक/कर्मकार पर होता है, जैसा कि माननीय उच्चतम न्यायालय द्वारा अपने निम्न न्यायनिर्णयों में प्रतिपादित किया गया है:-

“(1) Surendranagar District Panchayat v. Jethabhai Pitamberbhai-2005 (107) FLR 1145 (SC);

(2) R.M. Yellatti v. Assistant Executive Engineer - 2006 (108) FLR 213 (SC)”

10. न्यायदृष्टांत “आर०एम०येल्टट्टी बनाम सहायक अधिशासी अभियन्ता - 2006 (108) एफएलआर 213 (एससी)” के मामले में माननीय उच्चतम न्यायालय द्वारा यह भी प्रतिपादित किया गया है कि कर्मकार पर 240 दिन लगातार काम करने के तथ्य को साबित करने का जो भार है, उसमें कर्मकार द्वारा केवल मात्र अपने शपथ-पत्र में यह लिख देना कि उसने 240 दिन तक लगातार काम किया, पर्याप्त नहीं होगा, अपितु उसे किसी ठोस दस्तावेजी साक्ष्य से इस तथ्य को साबित करना होगा जिससे कि यह तथ्य सम्पुष्ट हो सके। इस संबंध में न्यायनिर्णय

के पेरा संख्या 17 निम्नानुसार है :-

“Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence both oral and documentary. In case of terminating of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter of facts of each case. The above however make it clear that mere affidavit or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed for 240 days in a given year. The above judgement further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact of each case.”

11. हस्तगत मामले में प्रार्थीया श्रमिक द्वारा अप्रार्थी नियोजक के यहां सेवा समाप्ति की तिथि से ठीक पूर्व के 12 कलेंडर माह की अवधि में निरन्तर 240 दिन कार्य किए जाने के तथ्य को प्रमाणित करने के लिए केवल स्वयं का शपथ-पत्र प्रस्तुत किया गया है। यह साक्षी अपनी जिरह में अप्रार्थी नियोजक के यहां कार्य किए जाने की तारीख भी याद होने से इंकार करती है। यद्यपि प्रार्थीया श्रमिक की ओर से न्यायाधिकरण के समक्ष दस्तावेजी साक्ष्य के रूप में प्रदर्श डब्ल्यू 1 व डब्ल्यू 2 कुल दो दस्तावेज प्रस्तुत कर प्रदर्शित करवाए गए हैं, परन्तु प्रदर्श डब्ल्यू 1 प्रार्थीया द्वारा सहायक श्रम आयुक्त (केन्द्रीय) स्टेशन रोड, कोटा के समक्ष ओ.वि. अधिनियम की धारा 2-ए के अंतर्गत प्रस्तुत किए गये प्रार्थना-पत्र के संबंध में अप्रार्थी का जवाब है। इस प्रकार प्रार्थीया ओर से प्रस्तुत दस्तावेज प्रदेश डब्ल्यू 1 प्रार्थीया को कोई लाभ नहीं पहुंचाता है। इसी प्रकार प्रार्थीया की ओर से प्रस्तुत दस्तावेज प्रदर्श डब्ल्यू 2 न्यायालय नियंत्रण प्राधिकारी अंतर्गत ग्रेच्युटी अधिनियम, 1972 एवं कार्यालय सहायक श्रम आयुक्त (केन्द्रीय) कोटा द्वारा प्रार्थीया प्रेम बाई की ओर से ग्रेच्युटी भुगतान अधिनियम, 1972 एवं केन्द्रीय नियम 10(1) के तहत ग्रेच्युटी निर्धारण एवं भुगतान हेतु निर्देशन बाबत प्रस्तुत किए गए

प्रार्थना-पत्र के संबंध में पारित आदेश हैं उक्त आदेश के द्वारा प्रार्थीया के पति मोडसिंह की मृत्यु होने पर प्रार्थीया को 1800/- रु० ग्रेच्युटी के रूप में भुगतान किए जाने का आदेश अप्रार्थी को दिए गए हैं, परन्तु उक्त दस्तावेज भी हस्तगत मामले में प्रार्थीया को कोई लाभ नहीं पहुंचाता है। इस संबंध में अप्रार्थी नियोजक ने साक्षी सुरेश कुमार की साक्ष्य न्यायाधिकरण के समक्ष लेखबद्ध करवायी है जिसमें प्रार्थीया द्वारा दि० 8/9/96 से 26/11/97 तक स्वयं के विभाग में दैनिक वेतन भोगी कर्मचारी के रूप में किये गए कार्य का विवरण प्रस्तुत किया है तथा प्रार्थीया द्वारा किसी भी वित्तीय वर्ष में निरन्तर 240 दिवस तक कार्य किए जाने से इंकार किया गया है। विद्वान प्रतिनिधि ने न्यायाधिकरण का ध्यान अप्रार्थी की ओर से प्रस्तुत किये गए साक्षी सुरेश कुमार की प्रतिपरीक्षा की ओर आकर्षित कर व्यक्त किया है कि प्रार्थीया के दि० 8/9/96 से 26/11/97 तक की अवधि के वास्तविक कार्यदिवसों में साप्ताहिक अवकाश नहीं जोड़े गए हैं। अतः प्रार्थीया के उक्त अवधि के वास्तविक कार्यदिवसों में साप्ताहिक अवकाश दिवस भी जोड़े जाकर उक्त दिवसों की गणना किए जाने की प्रार्थना न्यायाधिकरण से की है। यद्यपि अप्रार्थी के गवाह सुरेश कुमार ने अपनी प्रतिपरीक्षा में प्रार्थीया के वास्तविक कार्य दिवसों में साप्ताहिक अवकाश नहीं जोड़ा जाना व्यक्त किया है, परन्तु इस संबंध में न्यायदृष्टांत “2005(107) एएलआर 248(कर्नाटका)-हिमालया ड्रग कंपनी बनाम सरताज अहमद” के मामले में माननीय उच्च न्यायालय ने यह स्पष्ट रूप से प्रतिपादित किया है कि औ.वि. अधिनियम की धारा 25-एफ के प्रयोजन से 240 दिवस तक निरन्तर कार्य किये जाने का निर्धारण करते समय वे कार्यदिवस जिनमें मजदूरी का भुगतान नहीं किया गया है, व रविवार व अन्य राजपत्रित अवकाश जिनमें कोई मजदूरी का भुगतान नहीं किया गया है, की गणना नहीं की जा सकती। उक्त न्यायदृष्टांत का अवलम्ब लेते हुए हम हस्तगत मामले में भी साप्ताहिक अवकाश जोड़े जाकर प्रार्थीया के वास्तविक कार्यदिवसों की गणना किया जाना न्यायोचित नहीं पाते हैं।

12. विद्वान प्रतिनिधि प्रार्थीया द्वारा न्यायाधिकरण के समक्ष एक तर्क यह भी रखा गया है कि अप्रार्थी द्वारा अधिनियम की धारा 25-एफ की पालना किये बर्गर प्रार्थीया को नौकरी से निकाला गया है, अतः अप्रार्थी नियोजक द्वारा स्वयं प्रार्थीया द्वारा दिनांक 26/11/97 के बाद स्वयं नौकरी पर उपस्थित नहीं आने के संबंध में गलत कथन किया गया है। उन्होंने न्यायाधिकरण का प्रार्थी की ओर से प्रस्तुत किये गये साक्षी सुरेश कुमार के शपथ-पत्र के भाग सी से डी की ओर ध्यानाकर्षित करते हुए व्यक्त किया है कि उक्त गवाह ने प्रार्थीया को दि० 26/11/97 से आगे निरन्तरी कार्य पर रखे जाना संभव नहीं होना कहा है। इस संबंध में न्यायाधिकरण का मानना है कि प्रार्थीया, अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि से पूर्व के 12 कलेंडर माह की अवधि में निरन्तर 240 दिवस तक कार्य किये जाने के तथ्य को साबित करने में असफल रही है, इन परिस्थितियों में सेवा से निष्कासित किए जाने के आदेश की उचितता एवं वैधता के बिन्दु पर विचारण किए जाने का कोई औचित्य ही प्रकट नहीं होता है।

13. यद्यपि विद्वान प्रतिनिधि प्रार्थीया का एक तर्क न्यायाधिकरण के समक्ष यह रहा है कि मामले में प्रदर्श डब्ल्यू 2 न्यायालय नियंत्रण प्राधिकारी अंतर्गत ग्रेच्युटी भुगतान अधिनियम, 1972 एवं कार्यालय सहायक श्रम आयुक्त (केन्द्रीय), कोटा (राज.) द्वारा दिनांक 24/11/99 को पारित

आदेश में यह पाया गया है कि अप्रार्थी द्वारा अपने जबाव व बयान, दोनों में यह आपत्ति नहीं उठायी गयी है कि प्रार्थीया श्रमिक किसी वर्ष में 240 दिन लगातार सेवारत नहीं थी। अप्रार्थी द्वारा उक्त आपत्ति जिरह के समय उठाना मानते हुए उक्त आपत्ति को नहीं माना गया। अतः हस्तगत मामले में भी प्रार्थीया द्वारा अप्रार्थी के नियोजन में निरन्तर 240 दिन तक कार्य किये जाने का तथ्य प्रमाणित माने जाने की प्रार्थना की गयी है इस संबंध में न्यायाधिकरण का मानना है कि उक्त मामले में सुसंगत अवधि, अर्थात् सेवा समाप्ति की तिथि 26/11/97 से ठीक पूर्व के 12 कलेंडर माह की अवधि में प्रार्थीया द्वारा निरन्तर अप्रार्थी के यहां नियोजन में रहते हुए 240 दिन तक कार्य किए जाने का तथ्य उक्त दस्तावेज प्रदर्श डबल्यू 2 से प्रमाणित नहीं होता है, इस परिस्थिति में उक्त दस्तावेज प्रार्थीया को कोई लाभ नहीं पहुंचाता है।

14. अतः उपरोक्त विवेचन के आधार पर हम यह पाते हैं कि प्रार्थीया एक दैनिक वेतन भोगी कर्मचारी के रूप में दिनांक 8/9/96 से 26/11/97 तक की अवधि में अप्रार्थी के यहां कार्यरत थी तथा प्रार्थीया की नियुक्ति किसी स्थाई/अस्थायी पर पर भर्ती नियमों के अंतर्गत नहीं की गयी थी। प्रार्थीया सेवा समाप्ति की 26/11/97 से ठीक पूर्व के 12 कलेंडर माह की अवधि में निरन्तर 240 या उससे अधिक दिवस तक कार्य किये जाने के तथ्य को साबित करने में असफल रही है, अतः इन परिस्थितियों में प्रार्थीया को अधिनियमान्तर्गत कोई संरक्षण प्राप्त नहीं होने से वह अप्रार्थी नियोजक को विरुद्ध कोई अनुतोष प्राप्त करने की अधिकारिणी नहीं पायी जाती है एवं रेफ्रेन्स भी इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दि. 19/11/1999 के जरिए सम्प्रेषित निदेश/fj Yjs विवाद को इसी प्रकार उत्तरित किया जाता है कि प्रार्थीया श्रमिक श्रीमती प्रेमबाई अप्रार्थी नियोजक के यहां सेवा समाप्ति की तिथि 26/11/97 से ठीक पूर्व के 12 कलेंडर माह की अवधि में निरन्तर 240 दिवस तक कार्य किए जाने के तथ्य को साबित करने में असफल रही है, अतः वह अप्रार्थी नियोजक के विरुद्ध किसी प्रकार का कोई अनुतोष प्राप्त करने की अधिकारिणी नहीं है।

श्रीमती अनिता शर्मा, न्यायाधीश

तारीख: 19.12.2014

नई दिल्ली, 11 अगस्त, 2015

का.आ. 1619.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 45/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/08/2015 को प्राप्त हुआ था।

[सं० एल-40011/04/2015-आई आर (डीयू)]

पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2015

S.O. 1619.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (I.D. No. 45/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Bharat Sanchar Nigam Ltd. and their workman, which was received by the Central Government on 11/08/2015.

[F.No.L-40011/04/2015-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Wednesday, the 5th August, 2015

Present: K.P. PRASANNA KUMARI
Presiding Officer

Industrial Dispute No. 45/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and their workman)

BETWEEN

Sri Venkatesan : 1st Party/Petitioner
Vellore District President (Ex.), BJP
18, Vhyagaraja Salai, Salavanpettai
Vellore-632001

AND

The Chief General Manager : 2nd Party/Respondent
Bharat Sanchar Nigam Ltd.
Tamil Nadu Circle
Chennai-600002

Appearance:

For the 1st party/Petitioner : M/s A.S. Palanisamy,
Advocate

For the 2nd Party/Respondent : M/s K.V. Shanmuganathan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/04/2015-IR (DU) dated 20.04.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of BSNL, Vellore in respect of termination of service of 140 contract workmen/employees is justified or not? If not, to what relief the employees are entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 45/2015 and issued notices to both sides. On receipt of notice both sides have entered appearance through their counsel.

3. The matter had come up for hearing for the first time on 21.05.2015. It was being posted for filing Claim Statement and documents by the petitioner repeatedly. When the matter was called today, neither the petitioner nor his counsel were present. There was no representation on behalf of the petitioner also. The petitioner seems to be not interested in pursuing the case. In the absence of any material, adjudication of the dispute is not possible. Therefore, the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 5th August, 2015)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st party/Petitioner : None
For the 2nd Party/Management : None

Documents Marked

On the petitioner's side

Ex.No.	Date	Description
		Nil

On the Management's side

Ex.No.	Date	Description
		Nil
		नई दिल्ली, 11 अगस्त, 2015

का.आ. 1620.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांसुलेट जनरल ऑफ़ जापान चेन्नई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 32/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/08/2015 को प्राप्त हुआ था।

[सं. एल-42012/03/2012-आई आर (डीयू)]
पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2015

S.O. 1620.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 32/2014) of the Central Government Industrial Tribunal Cum Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Consulate General of Japan, Chennai and their Workman, which was received by the Central Government on 11/08/2015.

[No. L-42012/03/2012-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, the 31st July, 2015

Present : K.P. PRASANNA KUMARI
Presiding Officer

Industrial Dispute No 32/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Consulate General of Japan and their workman)

BETWEEN

Sri V. Shankar : 1st Party/Petitioner

AND

Counsulate General of Japan : 2nd Party/Respondent
Consulate General of Japan
12/1, Cenotaph Road, 1st Street
Teynampet
Chennai-600018

Appearance:

For the 1st party/Petitioner : Sri Balan Haridas,
Advocates

For the 2nd Party/Management: Sri Anand
Sashidaran, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/03/2012-IR (DU) dated 01.04.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the demand of the workman Shri V. Shankar, Gardner for reinstatement into the service is legal and justified? What relief the concerned workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 32/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. The petitioner has filed a rejoinder in reply to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined the service of the Respondent as a Gardener in the year 1993. He was a permanent employee of the Respondent. He was to report for work everyday at 0800 AM and had to work till 0500 PM. His duties were to maintain the garden of the Respondent. At the time of joining he was paid salary of Rs. 250/- per month. His last drawn salary was Rs. 5,669/- per month. The Respondent collects fees for issuing of Visa to persons who wants to visit Japan or to take up employment there. The Respondent was engaged in a systematic activity. The Respondent is an industry within the meaning of Section-2(i) of the Industrial Disputes Act. The petitioner is a workman under the Respondent as defined under Section-2(s) of the ID Act. While the petitioner was discharging his work as Gardner without any complaint, in the year 2005, the Respondent brought in Contractors to do the work of gardening. Though the petitioner objected he was forced to work under the so-called Contractor. Since he was objecting to the conversion of direct labour to contract labour the Respondent orally terminated his service in March 2006. He caused to send a legal notice on 23.06.2006 calling upon the Respondent to reinstate him in service with full back wages, continuity of service and other benefits. The Respondent gave a reply admitting that the petitioner was a direct employee of the Respondent. However, the Respondent stated that the Government of Japan has decided to do away with the service of the gardeners and to outsource the same. The petitioner had again sent a legal notice requesting the Respondent to reinstate him in service. The petitioner did not receive any reply to this notice. The petitioner did not immediately rush to court as he was making representation requesting the Respondent to reinstate him in service. The termination of the petitioner from service is illegal and in violation of the provisions of Industrial Disputes Act. An order may be passed holding that the termination of the petitioner is illegal and also directing the Respondent to reinstate the petitioner with full back wages, continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The participation of the Respondent in the proceedings does not mean that the Respondent and Government of Japan is submitting to the jurisdiction of the Tribunal or

that it is abandoning its sovereignty or waiving the immunity available under the Vienna Conventions on Diplomatic and Consular Relations. The present proceedings are violative of Vienna Conventions on Diplomatic and Consular Relations. Even otherwise the present proceedings are without jurisdiction as the activity of the Respondent does not fall within the definition of industry. Even if it is an industry the proceedings is without jurisdiction as the appropriate government is the State Government and not the Central Government. The Respondent is a consulate carrying on the legal and sovereign functions of Government of Japan such as issue of Visas, Issue of Passport to Japanese citizens, etc. The Respondent is not providing any material services. So it cannot be treated as an industry. In any case the petitioner has raised the dispute four years after his services were terminated on account of his resignation. The claim that he made representations to the Respondent is false. The petitioner has received Rs. 77,966.70/- towards termination benefits. Having enjoyed the same it is not open to him to claim that he is entitled to reinstatement. The Respondent does not require a permanent Gardener. So also the Respondent cannot be forced to reinstate the petitioner. The claim of the petitioner that the provisions of Section-9A of the ID Act have not been complied with is untenable. Section-25F of the ID Act also does not apply to the case as there was no retrenchment of the petitioner. The petitioner had voluntarily resigned. The petitioner is not entitled to any relief.

5. In the rejoinder filed, the petitioner has denied the allegations in the Counter Statement and has also reiterated his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext. W1 to Ext. W15.

7. The points for consideration are:

- (i) Whether the demand of the petitioner for reinstatement in the service of the Respondent is legal and justified?
- (ii) What is the relief to which the petitioner is entitled?

The Points

8. The petitioner who has been working under the Respondent as a Gardener has alleged that he was terminated from service illegally in March 2006. He seeks reinstatement in the service of the Respondent.

9. Before considering the case on merits, certain technical objections raised by the Respondent against maintainability of the dispute are to be considered.

10. The Respondent is Consulate General of Japan functioning at Chennai. The petitioner had been working as Gardener in the premises of the building housing the

consulate. The initial contention that is raised by the Respondent is that it being a consulate of the Government of Japan it is not amenable to the jurisdiction of this Tribunal, it having got sovereign immunity by virtue of Vienna Conventions on Diplomatic and Consular Relations. It is alleged by the Respondent that the present proceedings is in violation of Diplomatic relations (Vienna Conventions) Act.

11. The argument that has been advanced on behalf of the petitioner in answer to this contention is with reference to Article-33(3) of the Diplomatic Relations (Vienna Conventions) Act. Article-31 of the Act gives immunity to a diplomatic agent from the criminal jurisdiction of the receiving State and also immunity from civil and administrative jurisdictions with some exceptions. Article-33(1) states that subject to Para-3 of the article a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be imposed in the receiving State. It is on the basis of this provision the Respondent is claiming that it is not subject to jurisdiction of this Tribunal. Article-33(2) states that the exemption provided for in Para-1 shall also apply to private servants who are in sole employment of a diplomatic agent on condition (a) that they are not nationals or permanent resident in the receiving State and (b) that they are covered by the social security provisions which may be imposed in the sending State or a third State. Article-33(3) states that a diplomatic agent who employs persons to whom the exemption provided in Para-2 does not apply, shall observe the obligations which the social security provisions of the receiving State impose upon the employees. As could be seen Article 33(2) applies to private servants only. As admitted by the petitioner, he is not a private servant employed by a diplomatic agent. He is an employee of the Consulate. His engagement is with respect to services rendered for the sending state. So the Respondent is entitled to the exemption under Article 33(1).

12. The next contention raised by the Respondent is that the present proceedings is without jurisdiction as the activity of the Respondent does not fall within the definition of industry under Section-2(j) of the Industrial Disputes Act. The petitioner has contended in the claim Statement that the Respondent collects fees for issuing visa to persons and this is a systematic activity and this comes within the meaning of Section-2(j) of the Industrial Disputes Act. On the other hand, it is contended by the Respondent that it is only carrying out regal and sovereign functions of Government of Japan such as issue of Visa and issue of Passports to Japanese citizens, that it is not providing material services and this cannot by any stretch of imagination be treated as an industry.

13. It could be seen from the pleadings of the parties itself that there is no dispute regarding the manner of activity carried out by the Respondent. Apparently, it

issues visas and issues passports to Japanese citizens if it is lost, misplaced, stolen etc. The only question is whether this activity of the Respondent comes within the meaning of Industry as defined in Section-2(j) of the Industrial Disputes Act.

14. Both sides have referred different legal pronouncements in support of their contradictory contentions, the petitioner that its activity is not an industry and the Respondent that it is only an industry. The counsel for the Respondent has relied upon the decision of the Apex Court in the Corporation of the city of Nagpur vs. Its employees reported in AIR 1960 SC 675. In this decision the Apex Court has considered what is not an industry while considering the positive aspects of the definition of Industry and has held that the term cannot conclude the regal or sovereign functions of State. It was held that regal functions being inescapable and inalienable, as described in an Australian decision it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of industry and thus confer jurisdiction on industrial courts to decide dispute in respect thereof. The Apex Court held that for this reason the regal functions of a State are excluded from the definition of industry. The counsel has referred to a decision of the full bench of the Punjab and Haryana High Court in State of Punjab Vs. Kuldip Singh and another reported in 1982 ILR 2 P&H 544 where referring to the Nagpur Corporation case and also Bangalore Water Supply Case the Court has held that regal or sovereign functions of a State despite their closest resemblance to systematic activity are clearly to be held beyond the pale of industry as defined in Section-2(j) of the Act. In the Bangalore Water Supply case itself also [(AIR 1978 SC 548(1))] it has been asserted that sovereign functions strictly understood, qualify for exemption though not the welfare activities or economic adventures undertaken by Government or statutory bodies. The counsel for the Respondent has referred to the decision of the Kerala High Court in Najeema Beevi Vs. Public Service Commission reported in ILR 1983 1 Kerala 546 where it was held that Public Service Commission is not an industry. It was held that the functions of the Public Service Commissions are inalienable as these are envisaged by the Constitution itself and the functions are exercised in order to safeguard constitutional rights of the citizens. The High Court has stated that the material question to be asked at such instances is what is the nature of actual function assumed by the State, whether it is a service that the State could have left to private enterprise, and, if so fulfilled, could such a dispute be "industrial". If it could not be, it is performing inalienable functions or sovereign functions, it was held. The functions of a Public Service Commission was found to be one that could be performed by the State only and not inalienable and thus it was found not an industry.

15. The counsel for the petitioner has relied upon Bangalore Water Supply and Sewerage Board case already referred to earlier. In this also it has been held that sovereign functions of the State qualifies for exemption from the definition of industry. So the only question is whether the act of issue of Visa and Passports done by the Respondent is a sovereign function. The Respondent is an agent of the Government of Japan. On asking the question whether the activity of issue of Visas and Passports done by the Respondent is one that can be performed by private persons, what is the answer that would be available? Can the Indian Government entrust the activity of issuing visa and passports to private persons? Certainly that cannot be, Just like that the Government of Japan cannot be expected to delegate the function of issue of Visa and Passports to private persons. In such case certainly it is a regal and sovereign function and qualifies for exemption. No doubt, it has been held in Bangalore Water Supply and Sewerage case and has been followed in subsequent decisions that to make an activity an industry absence of profit motive or gainful objective is irrelevant whether the venture is public, joint, private or in any other sector. The true focus is functional and decisive test in the nature of activity with special emphasis on employer-employee relationship, it has been emphasized. Even if all these aspects are available in the activity done by the Respondent it will not make it an industry because of the exemption available so far as regal and sovereign functions are concerned. So the activity of the Respondent in any case could not be termed as an industry as defined Section in 2(j) of the ID Act.

16. One of the contentions that has been raised on behalf of the Respondent is that in any case the Central Government is not an appropriate Government so far as the dispute is concerned but it is only the State Government and that this Court has no jurisdiction to decide the case. Having found that the activity of the Respondent is a sovereign function and not an industry this question is irrelevant. Yet I am proceeding to consider the question in case the activity of the Respondent could be termed as an Industry. The answer to the claim of the petitioner that the Central Government is the appropriate Government in the matter should be in the negative. Section-2(a) of the Industrial Disputes Act describes the term appropriate Government. It is not necessary to quote the entire section for the purpose. What is relevant is the portion which states that in relation to any Industrial Dispute concerning any industry carried on by or under the authority of Central Government the appropriate Government will be the Central Government. There is no case for the petitioner that the activity of the Respondent is carried on by the Central Government. The counsel for the petitioner maintains that the activity of the Respondent is one carried out under the authority of the Central Government and therefore the Central Government is the appropriate Government in the

matter. Both sides have referred to different legal pronouncements in this respect also which I will be referring to in chronological order.

17. The counsel for the Respondent has referred to the decision of the High Court of Calcutta in Carlsbad Mineral Water Mfg. Co. Ltd. Vs. P.K. Sarkar and Others reported in AIR 1952 Calcutta 6 wherein it was held that the words "under the authority" means much the same as "on behalf of". It was a case where the appellant Company had entered into a contract with the Railway to sell to Railway Stations. It was found that the business of the Company itself was for their own personal profit and cannot be described to be one authorised to carry on Government business. The State Government was found to be the appropriate Government in the case. The next decision relied upon by the counsel for the Respondent is Heavy Engineering Mazdoor Union Vs. State of Bihar And Others reported in AIR 1970 SC 82 where it was held that there being nothing in Section-2(a) to the contrary, the word "authority" must be construed according to its ordinary meaning and therefore must mean a legal power given by one person to another to do an act. A person is said to be authorised or to have an authority when he is in such a position that he can act in a certain manner without incurring liability, to which he would be exposed but for the authority, or, so as to produce the same effect as if the person granting the authority had for himself done the act, it was held. The espoused case in the matter is Steel Authority of India and Others Vs. National Union Waterfront Workers and others reported in 2001 6 Supreme 602 relied upon by the counsel for the petitioner. The exposition given to the term "under the authority" in the previous decisions had been widened in the National Union Waterfront Workers case. Discussing various aspects the Apex Court has held in the above decision that being instrumentality of a Central/State Government or being State within the meaning of Article-12 of the Constitution cannot be determinative of the question whether an industry carried on by a Company/Corporation or an instrumentality of the Government is by or under the authority of the Central Government for the purpose of or within the meaning of the definition of "appropriate Government". It has been held that where the authority to carry on any industry for or on behalf of the Central Government is conferred on the Government Company/any undertaking by the statute under which it is created no further question arises. But if it not so, the question that arises is whether there is any conferment of the authority on the Government Company/any undertaking by the Central Government to carry out the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case, it has been held. It has been further clarified that such an authority might be conferred either by a statute or by virtue of relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case.

18. What is the position in the present case assuming that the activity carried on by the Respondent is an industry? The argument by the Counsel for the petitioner is that it is on the basis of permission or consent given by the Central Government that the activity is carried on by the Respondent. The Central Government might have granted permission to Government of Japan to run the Consulate. The factum of issue of Visa flows from this. It is not an authority conferred on the Respondent by the statute. The activity of the Respondent is not done by virtue of relation of the principal and agent between the Government of India and Government of Japan. It is not on the basis of delegation of power by the Central Government also. If power is to be delegated the Central Government should have the power to do the activity that is now being carried by the Respondent. The Central Government could not issue Visas on behalf of Government of Japan. It is something that could be done only by the Government of Japan and there is no delegation of power, this being the case. So the Central Government could not be described as the appropriate Government in the case even if the activity of the respondent is taken to be an industry.

19. In view of my previous findings, the petitioner will not be entitled to any relief even if the case is found in his favour on merits. However, the case is to be examined on merits for the sake of completion. Before going into merits there is one more aspect that is to be considered. The petitioner is said to have been terminated from service in March, 2006. He seems to have been working on contract basis at this time. According to him, his direct employment was put to an end to in the year 2005 when the Contractors were brought into the arena to do the work of gardening for the Respondents. The reference has reached the Tribunal in April, 2014. It is not clear on which date the dispute was raised by the petitioner before the Asstt. Labour Commissioner. As seen from the order of reference the failure report of Asstt. Labour Commissioner is dated 03.01.2012. So it is to be assumed that it was by the end of 2001 that the dispute was raised before the Asstt. Labour Commissioner. So there was a delay of more than 4 years in raising the dispute.

20. The petitioner has stated in the claim Statement that he did not want to rush to Court immediately after his termination and he had been making representation requesting the Respondent to reinstate him in service but the Respondent had failed to give any reply. This case of the petitioner is denied by the Respondent. The Respondent has stated in the Counter Statement that more than 4 years after his services were terminated on account of his resignation the dispute is raised and it is frivolous and vexatious.

21. The Respondent has advanced the argument that because of the delay itself the petitioner is not entitled to any relief. However, on going through Counter Statement it

could be seen that there is no specific case for the Respondent that delay in initiating the proceedings disentitles the petitioner from getting any relief. What is contended in the Counter Statement is because of the delay the petitioner is not entitled to any backwages in any case.

22. The counsel for the Respondent has referred to the decision *Swapna Adhikari Vs. State of Bengal* and others reported in WP 22991/2003 of the High Court of Calcutta with reference to the delay. However, this dispute was raised directly before the Tribunal under Section-2(A)2 of the Act. The decision is one S.2A(2) of the Act and is not applicable to the facts of the present case.

23. The counsel for the petitioner has referred to the decisions of the Apex Court in *Ajaint Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd.* reported in AIR 1999 SC 1351 and also the decision in *Jasmer Singh Vs. State of Haryana* and others reported in 2015 4 SCC 458 regarding delay. The dictum laid down by the Apex Court as found from the above two decisions is that no limitation is prescribed for raising demand by the workman and seeking reference under the Industrial Disputes Act and provisions of Article-137 of the Limitation Act are not applicable to any applications made under the Industrial Disputes Act. If delay is shown to be existing the Tribunal can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand, it has been held.

24. It is apparent that the petitioner raised the dispute after 4 years only. He has not given any valid explanation for the same also. What he has stated in the Claim Statement is that it was because he was making representations to the Respondent. However, though he has referred to legal notices caused to be sent to the Respondent and reply received he has not produced any of those notices. In his Proof Affidavit the case of the petitioner is that the delay was because he had a mentally retarded son. Thus it could be seen that there is no valid reason coming forth for the delay. But the petitioner cannot be denied any relief on account of this delay alone since Limitation Act is not applicable to the demand raised by the petitioner. The only thing is that the delay could be taken into account while moulding the relief, if any.

25. Lastly, what is the case of petitioner on merits? The petitioner was working as Gardener for the Respondent. Ext. W1 is the letter of employment showing that he was employed by the Respondent in the year 1993. Ext. W4 is the Identity Card issued to him by the Respondent. Ext. W2 shows his salary details of January, 1993. Ext. W5 is the salary register for October 2004 to January, 2005 and Ext. W6 is the Salary Register for the period from January, 2006 to March, 2006.

26. It is not disputed by the Respondent that the petitioner was under its employment. The case of the Respondent is that service of the Petitioner was terminated on account of his resignation. It is claimed by the Respondent that the Petitioner has received Rs. 77,166.70 towards termination benefits and he cannot claim reinstatement on account of this. Ext. W7 shows that the Petitioner has received the amount which is described as Gratuity. According to the Petitioner he did not tender any resignation. There cannot be resignation without giving one month's notice, it is stated. What the Petitioner has stated during his cross-examination is that he was told to work elsewhere for a period of one year when he was paid the amount.

27. In the Claim Statement. The petitioner has not referred to any amount received from the Respondent as Gratuity or otherwise. However, after the Respondent has filed Counter Statement referring to this he has filed a rejoinder stating that "the contention that he has resigned and received Rs. 77,966.70 is without substance". He has further stated that the amount was paid much earlier to the termination. He has stated that even after payment of the amount he continued to work and the same will demonstrate that the sum does not represent Gratuity. Thus it is admitted in the rejoinder that he has received the amount though not as Gratuity.

28. What the Petitioner has stated during his cross-examination is that he has received the amount in March 2006 and he was told that he should work somewhere else for a period of one year. Then he stated that he does not know why he was paid the amount at all. According to him, he asked the Respondent about the payment but they did not reveal for what purpose it was paid. The receipt marked as Ext.W7 which is described as receipt of Gratuity does not show any date. However, it is apparent from the admission of the Petitioner that he received the amount in March 2006. This date coincides with the date that is claimed by the Petitioner as the month and year of termination. Ext.W6 shows the payment of salary upto March 2006. So there is nothing to show that the Petitioner worked after March 2006, the period during which he received the amount also. So the amount must have been received by him as Gratuity itself. Otherwise he would have been able to describe the amount. It is pertinent to notice that the petitioner had been maintaining silence without raising any dispute for more than 4 years after he received this amount and he was terminated from service. So it is to be taken that he has received the amount in satisfaction of his claim with the Respondent after his service was put an end to, whether by resignation or in some other manner.

Thus it could be seen that in this respect also the Petitioner is not entitled to any relief.

In view of my discussion above the reference is answered against the Petitioner. An award is passed accordingly.

(Directed to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st July, 2015)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri V. Shankar
For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W 1	07.01.1993	Letter of Employment given by the Respondent
Ex.W 2	Jan., 1993	Salary details given by the Respondent
Ex. W 3	08.02.2005	Conduct Certificate
Ex.W 4	01.08.2005	Identity Card
Ex.W 5	Oct. 2004-Sep. 2005	Salary Register
Ex. W 6	Jan. 2006-March 2006	Salary Register
Ex. W7	-	Receipt of Gratuity
Ex. W8	-	Rules of Service
Ex. W 9	-	Amendment of Rules
Ex. W 10	22.02.1993	Letter of Salary increment
Ex. W 11	11.09.2010	Petition filed by the petitioner before Assistant Commissioner of Labour
Ex. W 12	21.02.2011	Counter filed by the Respondent before Assistant Commissioner of Labour
Ex. W 13	01.10.2011	Reply filed by the Petitioner before Asstt. Commissioner of Labour
Ex. W 14	03.04.2008	Letter regarding P.F.
Ex. W 15	-	Form regarding P.F.

On the Management's side

Ex.No. Date Description

Nil

नई दिल्ली, 11 अगस्त, 2015

का.आ. 1621.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल दूरदर्शन केंद्र एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ केस सं० 02/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/08/2015 को प्राप्त हुआ था।

[सं० एल-42012/232/94-आई आर (डी यू.)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2015

S.O. 1621.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (I.D. Case No. 02/1996) of the Central Government Industrial Tribunal-cum- Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director General, Doordarshan Kendra & others and their workman, which was received by the Central Government on 11/08/2015.

[No. L-42012/232/94-IR (DU)]
P. K. VENUGOPAL, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सीआईटी 02/1996

रैफरेंस: भारत सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक: एल-42012/232/94 आई आर (डी.यू.) नई दिल्ली, दिनांक 01.03.1991

लक्ष्मीनारायण पुत्र श्री सेवाराम, निवासी मुण्डोता, वाया-कालवाड,
जिला-जयपुर, राजस्थान

—प्रार्थी

बनाम

01. निदेशक, दूरसंचार विभाग, चतुर्थ फ्लोर,
जीएमटीडी कम्पाउण्ड, जयपुर।
02. डिविजनल इंजिनियरिंग टेलीकोम, टेलिकाम प्रोजेक्ट,
एस-6, अजय सदन, हवा सडक-जयपुर, राजस्थान।

—अप्रार्थीगण

उपस्थित

पीठासीन अधिकारी : श्री केदार लाल गुप्ता, आर०एच०जे०एस०
प्रार्थी की ओर से : श्री एम०एफ० बैग,
अप्रार्थी की ओर से : श्री नीरज बत्रा,

दिनांक: 22.07.2015

अधिनिर्णय

01. भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक एल-42012/232/94 आई आर (डी.यू.) नई दिल्ली, से निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को दिनांक 07.04.1994 को

इस आशय का प्राप्त हुआ है कि —Whether the action of the management of Telecom Deptt. Jaipur in terminating the services of Shri Laxmi Narayan, w.e.f. 01.03.1991 is justified? If not to what relief the workman is entitled to?

02. प्रार्थी श्रमिक लक्ष्मीनारायण की ओर से दिनांक 12.04.1996 को स्टेटमेंट ऑफ क्लेम इस आशय का प्रस्तुत किया कि प्रार्थी प्रबन्धन द्वारा उसकी प्रथम नियुक्ति दिनांक 12.03.1990 को दैनिक वेतन भोगी चौकीदार के पद पर की थी, तभी से वह ईमानदारी व मेहनत से कार्य करता आ रहा है, कभी किसी प्रकार की शिकायत नहीं रही। उसकी दिनांक 28.02.1991 को प्रार्थी प्रबन्धन द्वारा सेवा समाप्ति कर दी, और सेवा पृथक्करण से पूर्व प्रार्थी ने 12 माह में 240 दिन से अधिक कार्य किया है। अप्रार्थी प्रबन्धन द्वारा उसकी सेवाएं समाप्त करने से पूर्व नियमानुसार एक माह का नोटिस या नोटिस के बदले वेतन का भुगतान नहीं किया, न ही छंटनी मुआवजा दिया। इस तरह से प्रबन्धन द्वारा औद्योगिक विवाद अधिनियम की धारा 25 (F) का उल्लंघन किया है। प्रबन्धन द्वारा श्रमिक की सेवा समाप्ति से पूर्व कोई वरिष्ठता सूची भी नहीं बनाई, और वरिष्ठता का भी ध्यान नहीं रखा। प्रार्थी की सेवा समाप्ति के बाद प्रबन्धन द्वारा नई नियुक्तियाँ भी की गई हैं। प्रार्थी की सेवा समाप्ति के समय उससे कई कनिष्ठ श्रमिक कार्य करते थे। इस तरह से अप्रार्थी द्वारा औद्योगिक विवाद अधिनियम की धारा 25 (H) का उल्लंघन किया है। अप्रार्थीगण के यहां कभी कार्य का अभाव नहीं रहा, अब भी नहीं है। इस तरह से प्रार्थी को सरप्लस भी घोषित नहीं किया, न ही अन्यत्र समायोजित किया। इस तरह प्रबन्धन का कृत्य अनफेयर लेबर प्रैक्टिस में आता है। प्रार्थी की सेवा समाप्ति से उसके जीविकोपार्जन से वंचित हो गया है, जो भारतीय संविधान के अनुच्छेद 21 का उल्लंघन है, और अन्त में प्रार्थना की है कि श्रमिक से सेवा पृथक्करण आदेश को अवैध और अनुचित घोषित किया जाकर उसे सेवा पृथक्करण आदेश दिनांक 01.02.1991 से पुनः सेवा में लिया जाकर सेवा मुक्ति दिनांक से ही उसे वेतन भत्ते व अन्य पारिणामिक लाभ मय खर्चा दिलाया जावे।

03. अप्रार्थी प्रबन्धन द्वारा स्टेटमेंट ऑफ क्लैम का जवाब प्रस्तुत कर कथन किया है कि टेलीकॉम विभाग उद्योग की परिभाषा में नहीं आता है। इस कारण अधिकरण को इस मामले की सुनवाई का क्षेत्राधिकार नहीं है।

04. आगे यह कथन किया है कि प्रार्थी को कुछ समय के लिए विशेष कार्य के लिए मार्च, 1990 में रखा गया, और स्थाई सेवा में नहीं लिया। कार्य पूर्ण होने पर उसे मई, 1991 में हटाया, जिसकी सूचना श्रमिक को दी। श्रमिक को चूंकि विशेष कार्य के लिए रखा गया था, और उससे अवश्यकता अनुसार ही कार्य लिया जाता था। श्रमिक द्वारा एक वित्तीय वर्ष में निरन्तर 240 दिन की अवधि के लिए कार्य नहीं किया है। साथ ही यह कथन किया है कि श्रमिक को कार्य पर रखने से पूर्व मार्च, 1990 व कार्य समाप्ति से पूर्व मई, 1991 में सूचित किया था कि जिस कार्य के लिए उसे रखा गया था, वह अस्थायी है, और कार्य समाप्ति पर उसे हटा दिया जावेगा। इस तरह से औद्योगिक विवाद अधिनियम 1947 की धारा 25 (F) के उल्लंघन का प्रश्न ही नहीं है। चूंकि श्रमिक को विशिष्ट कार्य के लिए रखा गया था। इस कारण वरिष्ठता सूची प्रकाशित करने का सवाल ही नहीं होता। श्रमिक को चौकीदार के पद पर नहीं रखा था। श्रमिक के विरुद्ध दुर्भावनावाश कोई भी कार्यवाही नहीं की है, और अन्त में स्टेटमेंट ऑफ क्लैम खारिज करने की प्रार्थना की है।

05. प्रार्थी श्रमिक लक्ष्मीनारायण द्वारा अपने स्टेटमेंट ऑफ क्लैम के समर्थन में स्वयं की मौखिक साक्ष्य तथा अप्रार्थी संस्थान की ओर से सी०पी० भाटिया की मौखिक साक्ष्य लिपिबद्ध करवाई गई तथा प्रलेखीय साक्ष्य में प्रदर्श आर-1 लगायत प्रदर्श आर-13 दस्तावेजात प्रदर्शित करवाए हैं।

06. श्रमिक के विद्वान प्रतिनिधि का तर्क है कि प्रबन्धक द्वारा उसे दिनांक 12.03.1990 से दैनिक वेतन भोगी चौकीदार के लिए रखा गया, लेकिन दिनांक 28.02.1991 को बिना किसी कारण नोटिस वेतन दिए उसकी सेवाएं समाप्त कर दी गई। श्रमिक ने एक वर्ष में लगातार 240 दिन कार्य किया है। अतः श्रमिक की सेवा समाप्ति का आदेश अवैध और शून्य है, और श्रमिक को सेवा में पुनः लिया जाकर सेवा मुक्ति दिनांक से ही उसे वेतन भत्ते व अन्य पारिणामिक लाभ मय खर्चा दिलाया जावे।

07. जबकि अप्रार्थी प्रबन्धन के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी को संविदा के आधार पर कार्य की आवश्यकता अनुसार अस्थायी रूप से रखा गया था। इस संबंध में प्रार्थी को सेवा में लिए जाने पूर्व ही बता दिया गया था तथा कार्य समाप्त होने पर उसकी सेवाएं स्वतः ही समाप्त ही गई, और श्रमिक द्वारा एक वर्ष में लगातार 240 दिन से अधिक कार्य नहीं किया है। इस तरह से औद्योगिक विवाद अधिनियम की धारा 25 (F) का उल्लंघन नहीं होता है, और स्टेटमेंट ऑफ क्लैम प्रार्थना पत्र खारिज करने का निवेदन किया है।

08. प्रार्थी ने अपने स्टेटमेंट ऑफ क्लैम व साक्ष्य में अप्रार्थी प्रबन्धन द्वारा दिनांक 12.03.1990 से दैनिक वेतन भोगी चौकीदार के रूप में रखा जाना और दिनांक 28.02.1991 को प्रबन्धन द्वारा उसकी सेवा समाप्त करना बताते हुए कहा है कि इस अवधि में श्रमिक द्वारा 240 दिन से अधिक कार्य किया है। जिरह में यह स्वीकार किया है कि उसे कोई नियुक्ति पत्र नहीं दिया गया, मौखिक रूप से ही रखा गया था, और उसके द्वारा दिनांक 12.03.1990 से दिनांक 29.02.1991 तक कार्य किया, और उसे मौखिक आदेश से ही हटा दिया गया। इस तरह से श्रमिक को सेवा में लिए जाने और सेवा समाप्त किए जाने का कोई प्रबन्धन ने लिखित आदेश पारित नहीं किया है। प्रतिरक्षा में प्रबन्धन के साक्षी सी०पी० भाटिया ने श्रमिक को मार्च, 1990 में दैनिक वेतन पर संविदा के आधार पर कुछ समय के लिए किसी विशेष कार्य के लिए रखना स्वीकार किया है, और यह कथन किया है कि उसका कार्य पूर्णतया अस्थायी था, और कार्य समाप्त होने पर श्रमिक की सेवाएं स्वतः समाप्त हो गई, जिसकी सूचना श्रमिक को पूर्व में ही दी गई थी। पुनः श्रमिक को मई, 1991 में कार्य पर रखा गया, और यह कार्य अस्थायी था। कार्य समाप्त होने पर स्वयं ही सेवाएं समाप्त मानी जाएगी, इसकी सूचना श्रमिक को दी गई। इस तरह से अप्रार्थीगण की यह साक्ष्य है कि श्रमिक ने मार्च, 1990 से फरवरी, 1991 तक लगातार 240 दिन कार्य नहीं कर केवल 228 दिन ही कार्य किया है। इस कारण श्रमिक के संबंध में औद्योगिक विवाद अधिनियम की धारा 25 (F) के प्रावधान लागू नहीं होते हैं। जिरह में यह स्वीकार किया है कि जब श्रमिक की दिनांक 01.03.1991 को सेवाएं समाप्त की गईं तो उसे कोई क्षतिपूर्ति राशि नहीं दी गई, क्योंकि वह

पूर्णतया अस्थायी था। यह भी स्वीकार किया है कि श्रमिक के संबंध में कोई वरिष्ठता सूची नहीं बनाई गई, क्योंकि यह अस्थायी था, और बाद में श्रमिक के केंद्र के संबंध में कोई भी नियुक्ति नहीं की गई।

09. प्रदर्श एम-3 में श्रमिक को मार्च, 1990 से मई, 1991 की अवधि के दौरान 228 दिन कार्य करना बताया है। इसके संबंध में प्रदर्श आर-1 लगायत प्रदर्श आर-10 प्रस्तुत किए हैं, और इस अवधि के प्रमाण पत्र प्रदर्श आर-11 लगायत प्रदर्श आर-13 प्रस्तुत किए हैं। इन सभी प्रलेखों से श्रमिक का मार्च, 1990 से मई, 1991 तक 228 दिन कार्य करना ही प्रकट होता है। श्रमिक ने जिरह में यह स्वीकार किया है कि उसे कोई नियुक्ति पत्र नहीं दिया, और उसे मौखिक आधार पर ही हटाया गया, और उसके द्वारा 12 मार्च, 1990 से 29.02.1991 तक कार्य किया है। इस अवधि में प्रबन्धन की ओर से भी श्रमिक का उनके यहां कार्य करना स्वीकार किया है, लेकिन इस संबंध में प्रबन्धन की ओर से यह कहा गया है कि श्रमिक ने केवल 228 दिन ही कार्य किया है, जबकि श्रमिक का यह कहना है कि उसने 240 दिन से अधिक कार्य किया है। श्रमिक की ओर से इस संबंध में न्यायालय के समक्ष कोई साक्ष्य प्रस्तुत नहीं की है कि इस अवधि में उसके द्वारा 240 दिन से अधिक कार्य किया हो।

10. मेरे विनम्र मत में श्रमिक को ही यह साबित करना था कि उसने इस अवधि में 240 दिन से अधिक कार्य किया है, और उसके द्वारा प्रमाणित नहीं किया गया है। जबकि प्रबन्धन की ओर से प्रस्तुत साक्ष्य से यह स्पष्ट है कि इस अवधि में श्रमिक ने 240 दिन कार्य नहीं कर केवल 228 दिन ही कार्य किया है। साक्षी सी० पी० भाटिया के कथनानुसार श्रमिक को संविदा के आधार पर विशेष कार्य के लिए ही कुछ समय के लिए अस्थायी तौर पर रखा गया था, और कार्य समाप्त होने पर उसकी सेवाएं अपने आप ही समाप्त हो गई, जिसकी सूचना श्रमिक को दी गई थी। प्रदर्श एम-1 पत्र दिनांक 31.03.1990 के द्वारा श्रमिक को यह सूचित किया गया कि प्रबन्धन के यहां दिनांक 30.04.1990 तक ही कार्य है, उसके बाद उसे हटाया जावेगा, और कहीं अन्यत्र कार्य तलाश कर सकते हैं। पत्र प्रदर्श एम-2 दिनांक 01.05.1991 द्वारा भी श्रमिक को यह सूचित किया गया कि उनका कार्य अस्थायी है, और 30-40 दिन की अवधि का ही शेष है, कार्य समाप्त होने पर सभी अपने-अपने लिए कहीं और कार्य तलाश कर सकते हैं। इस तरह से श्रमिक को अस्थायी तौर पर दैनिक वेतन पर कार्य विशेष के लिए ही रखा गया था, और इस अवधि में भी श्रमिक ने एक वर्ष में लगातार 240 या उससे अधिक दिवस कार्य नहीं किया है। अतः ऐसी स्थिति में औद्योगिक विवाद अधिनियम की धारा 2 (oo) (bb) के अनुसार नियोजक और कर्मकार के मध्य संविदा के समाप्त होने पर उसका नवीनीकरण नहीं किया है तथा कार्य के समाप्त होने पर श्रमिक की सेवाएं स्वतः ही समाप्त हो गई। अतः मेरे विनम्र मत में यह छटनी की श्रेणी में नहीं आता है। इस कारण औद्योगिक विवाद अधिनियम की धारा 25 (F) के प्रावधान लागू नहीं होते हैं।

11. अतः प्रबन्धन द्वारा श्रमिक का आगे सेवा में जारी नहीं रखना और उसकी दिनांक 01.03.1991 से स्वतः सेवाएं समाप्त माना जाता उचित और वैध है। श्रमिक किसी तरह की सहायता प्राप्त करने का

अधिकारी नहीं है। उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अधिनिर्णय पारित किया जाता है:-

अधिनिर्णय

12. श्रमिक लक्ष्मीनारायण पुत्र श्री सेवाराम निवासी मुण्डोता, वाया-कालवाड, जिला-जयपुर, राजस्थान की ओर से प्रस्तुत स्टेटमेंट ऑफ क्लेम अस्वीकार किया जाकर खारिज किया जाता है। अप्रार्थी प्रबंधन द्वारा प्रार्थी लक्ष्मीनारायण को दिनांक 01.02.1992 से सेवा में नहीं रखकर स्वतः सेवा समाप्त माना जाना उचित और वैध है। अतः श्रमिक किसी तरह की राहत पाने का अधिकारी नहीं है।

केदार लाल गुप्ता, न्यायाधीश

नई दिल्ली, 11 अगस्त, 2015

का.आ. 1622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल दूरदर्शन केन्द्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं० 05/1994) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.08.2015 को प्राप्त हुआ था।

[सं० एल-42012/32/93-आईआर(डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2015

S.O. 1622.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. 05/1994) of the Central Government Industrial Tribunal-Cum Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director General, Doordarshan Kendra and their workman, which was received by the Central Government on 11.08.2015.

[No. L-42012/32/93-IR(DU)]

P.K. VENUGOPAL, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सीआईटी 05/1994

रैफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक: एल-42012/32/93 आईआर(डीयू), नई दिल्ली, दिनांक 28.03.1994

प्रहलाद मीणा पुत्र किशना मीणा, निवासी संतोषपुरा, तहसील चाकसू, जिला-जयपुर, बी-18, बीजेपी कॉलोनी, टॉक फाटक, जयपुर।

.....प्रार्थी

बनाम

डायरेक्टर, दूरदर्शन केन्द्र, झालाना डूंगरी, जयपुर

.....अप्रार्थी

उपस्थित

पीटसीन अधिकारी, श्री केदार लाल गुप्ता, आर०एच०जे०एस०

प्रार्थी की ओर से : श्री आर०सी० जैन,

अप्रार्थी की ओर से : श्री तेजप्रकाश शर्मा

दिनांक: 30.06.2015

अधिनिर्णय

1. भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक एल-42012/32/93 आईआर (डीयू) नई दिल्ली, से निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को दिनांक 07.04.1994 को इस आशय का प्राप्त हुआ है कि-Whether the action of the Director, Doordarshan Kendra, Jaipur in terminating the services of Shri Prahalad Meena S/o Shri Kishna w.e.f. 01.02.1992 is justified? If not, what relief the workman concerned is entitled to?

2. प्रार्थी श्रमिक प्रहलाद मीणा की ओर से दिनांक 06.07.1994 को स्टेटमेंट ऑफ क्लेम इस आशय का प्रस्तुत किया कि उसे दिनांक 12.04.1989 को 650/- रुपये प्रतिमाह की दर से दूरदर्शन केन्द्र में घास काटने, साफ-सफाई करने व बगीचे की देखभाल करने के लिए नियुक्त किया गया, लेकिन उससे प्रायः चतुर्थ श्रेणी कर्मचारी का ही कार्य लिया करते थे। उक्त कार्य श्रमिक द्वारा कठोर परिश्रम, लगन व ईमानदारी से किया गया, लेकिन अचानक अप्रार्थी द्वारा उसे बिना किसी पूर्व सूचना के 01 फरवरी, 1992 को सेवा मुक्त किया गया। इस पर श्रमिक द्वारा अप्रार्थी से व्यक्तिगत सम्पर्क कर निवेदन किया, तब अप्रार्थी के अधिकारी द्वारा कर्मचारी को आश्वासन दिया कि शीघ्र ही उसे काम पर ले लेंगे, लेकिन काम पर नहीं लिया। इस पर प्रार्थी ने 08 जून, 1992 को अप्रार्थी से पंजीकृत पत्र द्वारा निवेदन काम पर लेने का किया, लेकिन अप्रार्थी ने इसका कोई जवाब नहीं दिया। इस पर प्रार्थी ने माननीय सहायक श्रम आयुक्त, भारत सरकार, जयपुर के समक्ष औद्योगिक विवाद प्रस्तुत किया, लेकिन अप्रार्थीगण की हठधर्मिता के कारण कोई समझौता नहीं हो सका, जिस पर असफल वार्ता प्रतिवेदन केन्द्रीय सरकार के यहां प्रस्तुत किया, जिन्होंने मामला इस अधिकरण के समक्ष प्रस्तुत किया।

3. इस तरह से अप्रार्थी द्वारा प्रार्थी श्रमिक की सेवा मुक्ति औद्योगिक विवाद अधिनियम, 1947 के प्रावधानों का उल्लंघन कर की है, जो अनुचित और अवैध है, क्योंकि अप्रार्थी द्वारा सेवा मुक्ति से पूर्व उसे न तो कोई नोटिस दिया, न ही विभागीय जांच की और उसे सुनवाई का कोई अवसर भी नहीं दिया तथा नोटिस के बदले एक माह के वेतन का भुगतान भी नहीं किया है। इस तरह से अप्रार्थी द्वारा अधिनियम के प्रावधानों की अवहेलना की गई है, और प्रार्थी की नियुक्ति के पश्चात् अनेक श्रमिकों को नियुक्त किया, लेकिन प्रार्थी की सेवा मुक्ति से पूर्व उन्हें नहीं हटाया गया, जो प्रार्थी से कनिष्ठ थे। प्रार्थी ने एक वर्ष में 240 दिन से

अधिक निरन्तर अप्राथी के यहां कार्य किया है, और प्राथी से कई कनिष्ठ श्रमिक अप्राथी संस्थान के यहां कार्य कर रहे हैं। अन्त में प्रार्थना की है कि श्रमिक के सेवा मुक्ति आदेश को अवैध और अनुचित घोषित किया जाकर उसे सेवा मुक्ति आदेश दिनांक 01.02.1992 से सेवा में माना जावे, और सेवा मुक्ति दिनांक उसे ही से वेतन भत्ते व अन्य पारिणामिक लाभ मय खर्चा दिया जावे।

4. अप्राथी की ओर से दिनांक 24.01.1996 को जवाब प्रस्तुत कर प्रारंभिक आपत्ति इस आशय की ली कि अप्राथी दूरदर्शन केन्द्र, केन्द्र सरकार का उपक्रम है, जिसमें प्राथी ने भारत संघ को पक्षकार नहीं बनाया है। साथ ही प्राथी के पक्ष में कोई वाद कारण उत्पन्न नहीं होता है। प्राथी के ही प्रार्थना पत्र के अनुसार उसके द्वारा बाग पर रख-रखाव हेतु ठेके पर कार्य किया है। इस हेतु स्वयं उसने अप्रैल, 89 में प्रार्थना पत्र प्रस्तुत किया, जो प्रदर्श 1 बतलया है।

5. अप्राथी के कार्यालय में अन्य तीन व्यक्तियों के द्वारा भी आवेदन ठेके पर कार्य करने हेतु प्राप्त सभी आवेदनों का तुलनात्मक विवरण तैयार किया, जिसमें प्राथी को ठेके की दर न्यूनतम पाई। इसी आधार पर उसे कार्य करने का ठेका दिया। तुलनात्मक विवरण प्रदर्श-2 है तथा यह कथन किया है कि अप्राथी द्वारा प्राथी को किसी तरह की नियुक्ति नहीं दी गई है, बल्कि बगीचे के रख-रखाव हेतु आकस्मिक कार्य ठेके पर दिया गया। अतः प्राथी श्रमिक की परिभाषा में नहीं आता है, जिसका औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं, और अप्राथी का संस्थान औद्योगिक विवाद अधिनियम, 1947 की परिभाषा में नहीं आता है। अतः इसी आधार पर प्राथी का स्टेटमेंट ऑफ क्लैम खारिज करने का निवेदन किया है।

6. प्राथी ने ठेके पर कार्य करने के तथ्य को जान-बूझकर छिपाया है। चूंकि प्राथी को ठेके पर निश्चित कार्य के लिए रखा गया है। इस कारण औद्योगिक विवाद अधिनियम की धारा 2 (oo) (bb) के तहत प्राथी का क्लैम पोषणीय नहीं है। प्राथी का मामला छटनी की परिभाषा में नहीं आता है, क्योंकि उसे अनुबंध और ठेके पर निश्चित अवधि के लिए रखा गया था, जिसका नवीनीकरण नहीं होने पर ठेका स्वतः समाप्त हो गया है। अतः स्टेटमेंट ऑफ क्लैम खारिज करने की प्रार्थना की है।

7. प्राथी श्रमिक प्रहलाद मीणा द्वारा अपने स्टेटमेंट ऑफ क्लैम के समर्थन में स्वयं की मौखिक साक्ष्य, प्रलेखीय साक्ष्य में प्रदर्श डब्ल्यू-1 लगायत प्रदर्श डब्ल्यू-3 को प्रदर्शित करवाया है अप्राथी संस्थान की ओर से आर० के० शेलकर की मौखिक साक्ष्य लिपिबद्ध करवाई गई।

8. प्राथी के विद्वान प्रतिनिधि का तर्क है कि अप्राथी द्वारा उसे दिनांक 12.04.1989 को 650/- रुपये प्रतिमाह की दर से नियुक्ति दी गई, और उससे चतुर्थ श्रेणी कर्मचारी के रूप में कार्य लिया जाता, उसने मेहनत, ईमानदारी से कार्य किया, लेकिन अचानक दिनांक 01.02.1992 को सेवा मुक्त किया। सेवा मुक्ति से पूर्व उसे न तो कोई आरोप पत्र दिया, न ही नोटिस दिया, न ही उसके विरुद्ध घरेलू जांच की गई और उसे सुनवाई का अवसर दिए बिना उसकी सेवाएं बिना किसी कारण के समाप्त की हैं। इस हेतु प्राथी द्वारा अप्राथी संस्थान के अधिकारी व कर्मचारियों से निवेदन किया, और उन्होंने श्रमिक को पुनः सेवा में लिए जाने का आश्वासन दिया। अंततः सेवा में नहीं लिया गया। प्राथी द्वारा एक वर्ष में

240 दिन से अधिक कार्य निरन्त किया और उसकी सेवा मुक्ति से पहले न तो एक माह का नोटिस वेतन दिया और न ही छटनी के प्रावधानों के अनुसार उसे प्रतिकर की राशि अदा की। प्राथी से कनिष्ठ कर्मचारियों को अप्राथी द्वारा नहीं हटाया गया है। अतः प्राथी औद्योगिक विवाद अधिनियम की धारा 1947 के प्रावधानों का उल्लंघन कर सेवा मुक्त किया है। सेवा मुक्ति आदेश को निरस्त कर उसे पुनः सेवा में नियुक्ति किए जाने व इस अवधि के अन्य पारिणामिक लाभ दिए जाने की प्रार्थना की है।

9. इसके विपरीत अप्राथी के विद्वान प्रतिनिधि का तर्क है कि प्राथी को किसी पद पर नियुक्त नहीं किया गया, बल्कि उसे निश्चित कार्य एवं निश्चित अवधि के लिए प्राथी द्वारा आवेदन प्रस्तुत करने पर ठेके पर उसे बगीचे के रख-रखाव के लिए रखा गया था। प्राथी के साथ ही अन्य तीन व्यक्तियों के आवेदन भी प्राप्त हुए। प्राथी की तुलनात्मक रूप से न्यूनतम दर पाई गई, इस पर उसे ठेके पर कार्य दिया गया। उसकी किसी तरह की नियुक्ति नहीं दी गई। प्राथी ने स्टेटमेंट ऑफ क्लैम व साक्ष्य में ठेके पर रखे जाने के तथ्य को छुपाया है। प्राथी के ठेके की अवधि आगे नहीं बढ़ाई गई। अतः औद्योगिक विवाद अधिनियम की धारा 2 (oo) (bb) के तहत प्राथी का मामला छटनी की परिभाषा में नहीं आता है और न ही अनुबंध का नवीनीकरण किया गया है। इस कारण श्रमिक ने ठेका अवधि समाप्त होने के पश्चात् उसका स्वतः ही कार्य करना बंद कर दिया और स्टेटमेंट ऑफ क्लैम खारिज करने की प्रार्थना की है।

10. प्राथी श्रमिक प्रहलाद मीणा ने अपनी साक्ष्य में स्टेटमेंट ऑफ क्लैम का समर्थन कर अप्राथी द्वारा उसे दिनांक 12.04.1989 से 650/- रुपये प्रतिमाह की दर से दूरदर्शन केन्द्र में घास काटने, सफाई करने व बगीचे की देखभाल करने के लिए नियुक्त करना कहा है और यह भी कहा है कि उसे चतुर्थ श्रेणी कर्मचारी के रूप में ही कार्य लिया जाता था। प्रदर्श एम-1 को अप्राथी द्वारा लिखवाया जाना बताकर इस पर ए से बी अपने हस्ताक्षर स्वीकार किए हैं, जिसके अनुसार श्रमिक प्रहलाद मीणा ने दिनांक 12.04.1989 को निदेशक, दूरदर्शन केन्द्र को प्रार्थना पत्र प्रस्तुत कर यह उल्लेख किया है कि उसके द्वारा रामनिवास बाग, जेडीए में दैनिक वेतन पर काम किया है और वह 650/- रुपये प्रतिमाह पर बगीचे का कार्य ठेके पर करने के लिए तैयार है। यद्यपि प्राथी ने प्रार्थना पत्र में अप्राथी के यहां ठेके पर कार्य करने से इन्कार किया है, लेकिन प्रार्थना पत्र प्रदर्श एम-1 से यह स्पष्ट है कि उसने अप्राथी के यहां ठेके पर 650/- रुपये प्रतिमाह की दर से बगीचे की रख-रखाव के लिए कार्य किया है। प्राथी ने अप्राथी द्वारा उसके पक्ष में जारी किया गया नियुक्ति आदेश प्रस्तुत नहीं किया है। अतः प्राथी श्रमिक को अप्राथी द्वारा चतुर्थ श्रेणी कर्मचारी के रूप में नियुक्ति दी गई हो, यह मेरे विनम्र मत में प्राथी की साक्ष्य से साबित नहीं होता है। प्राथी ने प्रार्थना पत्र प्रदर्श डब्ल्यू-1 प्रस्तुत कर यह उल्लेख किया है कि से झालाना डूंगरी पर माली के कार्य के लिए सेवा में लिया था। इससे अप्रत्यक्ष रूप से यह अर्थ निकलता है कि उसने अप्राथी के बगीचे की देखभाल के लिए प्राथी की ठेके पर सेवाएं ली। इस प्रार्थना पत्र में प्राथी ने स्वयं को माली के कार्य पर सेवा में लेने का उल्लेख किया है। माली का कार्य और बगीचे की देखभाल मेरे विनम्र मत में दोनों ही समान कार्य हैं। प्रतिक्रिया में साक्षी आर०के० शेलकर ने भी प्राथी को ठेके के आधार पर बगीचे की देखभाल करने के लिए रखना बताकर यह कहा है कि ठेके की अवधि समाप्त होने के

पश्चात् श्रमिक का कार्यकाल स्वतः ही समाप्त हो गया और इससे पूर्व प्रार्थी ने दिनांक 12.04.1989 को प्रार्थना पत्र प्रदर्श एम-1 प्रस्तुत किया। अन्य व्यक्तियों ने भी उनके यहां प्रार्थना की, लेकिन प्रार्थी की दर न्यूनतम पाए जाने पर उसे ठेके पर कार्य दिया, और जिरह में कहा है कि तुलनात्मक कोटेशन आए थे, जिसका प्रदर्श एम-2 पर विवरण है, और श्रमिक को एक महिने की अवधि के लिए ठेका दिया था, फिर अप्रैल, 91 से सितम्बर, 91 तक ठेका दिया।

11. इस संबंध में श्रमिक की ओर से प्रस्तुत किए गए न्यायिक दृष्टांत 1957 ILLJ 477 (S.C.) Dharangadhra Chemical Works, Ltd. Vs. State of Saurashtra & others के मामले में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है कि कोई व्यक्ति नियोक्ता का कर्मचारी है। इसके निर्धारण के लिए यह सुनिश्चित करना होगा कि क्या उस व्यक्ति पर नियोक्ता का नियंत्रण और पर्यवेक्षण है।

12. 2010 (126) FLR 554 (Rajasthan High Court) Rajasthan State Text Book Board Vs Shri Kajodmal & another के मामले में माननीय राजस्थान उच्च न्यायालय ने यह निर्धारित किया है कि दोनों ही पक्षकारों की सहमति के बिना श्रमिक को संविदा पर नियुक्त नहीं किया जा सकता।

13. 2010 S.C.C. (L&S) 574 Chief Secretary, Haryana & Another Vs Chetram के मामले में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है कि जहां नियोक्ता द्वारा संविदा को साबित करने के लिए कोई सामग्री प्रस्तुत नहीं की गई है, और श्रमिक की सेवाएं समाप्त की गई हैं तो वह औद्योगिक विवाद अधिनियम की धारा 25 (F) का उल्लंघन है।

14. 2000 (87) FLR 727 (S.C.) Executive Engineer, C.P.W.D., Indore Vs Madhukar Purshottam Kolbarkar & another के मामले में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है जहां नियुक्ति आदेश में कार्य का निश्चित समय नहीं दर्शाया है, और दैनिक वेतन भोगी श्रमिक की सेवाएं समाप्त की जाती हैं तब अधिनियम की धारा 2 (oo) (bb) के प्रावधान लागू नहीं होते हैं।

15. इस संबंध में अप्रार्थी की ओर से प्रस्तुत किए गए न्यायिक दृष्टांत Services Law Reporter 2002 (4) 672 Nuclear Fuel Complex, Hyderabad Vs K. Penta Reddy & others के मामले में माननीय आन्ध्रप्रदेश उच्च न्यायालय ने यह निर्धारित किया है कि संविदा पर विशिष्ट समय और विशिष्ट कार्य के लिए रखे गए श्रमिक के संबंध में औद्योगिक विवाद अधिनियम की धारा 25 (F) के प्रावधान लागू नहीं होते हैं।

16. (1996) 10 Supreme Court Cases 597 Allahabad Bank Vs Prem Singh के मामले में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है कि संविदा लिए गए श्रमिक के संबंध में संविदा की समय समाप्ति के बाद स्वतः उसकी सेवाएं समाप्त हो जाती हैं, और उसके बाद वह नियोक्ता का कर्मचारी नहीं रहता है। ऐसी स्थिति में औद्योगिक विवाद अधिनियम की धारा 2 (oo) (bb) के तहत यह मामला छंटनी की श्रेणी में नहीं आता है।

17. 1197 Lab I.C. 2075 (S.C.) Himanshu Kumar Vidyarthi & other Vs State of Bihar & others के मामले में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है कि दैनिक वेतन भोगी कर्मचारी की नियुक्ति कार्य की आवश्यकता के आधार पर की जाती है, कोई पद धारित नहीं करता है, अस्थायी है तथा उसकी सेवा समाप्ति छंटनी की श्रेणी में नहीं आती है।

18. वर्तमान मामले में श्रमिक ने प्रार्थना पत्र प्रदर्श एम-1 पर अपने ए से बी हस्ताक्षर स्वीकार किए हैं, और साक्ष्य में 12.04.89 से दूर दर्शन केन्द्र में घास काटने, साफ-सफाई करने व देखभाल के लिए अप्रार्थी द्वारा नियुक्त करना कहा है। प्रदर्श एम-1 श्रमिक द्वारा दिनांक 12.04.1989 को ही प्रस्तुत किया है, जिसमें उसके द्वारा यह उल्लेख किया है कि उसे यह पता चला है कि बाग के रख-रखाव ठेके पर देना चाहते हैं, और वह 650/- रुपये प्रतिमाह में बगीचे का कार्य ठेके पर करने के लिए तैयार है। प्रतिरक्षा में भी उसे ठेके पर कार्य करना बताया गया है। अतः यह नहीं लगता कि अप्रार्थी का प्रार्थी के कार्य पर प्रत्यक्ष नियंत्रण और पर्यवेक्षण हो। चूंकि बगीचे की देखभाल और रख-रखाव आकस्मिक कार्य है, ऐसी स्थिति में मेरे विनम्र मत में प्रार्थी औद्योगिक विवाद अधिनियम के तहत श्रमिक की परिभाषा में नहीं आता है, और न ही प्रार्थी और अप्रार्थी के मध्य नियोक्ता और कर्मचारी के संबंध हैं। चूंकि प्रार्थी ने अप्रार्थी के यहां बगीचे की देखभाल के लिए ठेके पर कार्य किया है। इस हेतु दिनांक 01.04.1991 से 30.09.1991 तक भुगतान भी किया है, और ठेके पर अवधि समाप्त होने पर उसकी सेवाएं स्वतः ही समाप्त हो गईं। अतः अप्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांतों को दृष्टिगत रखते हुए मेरे विनम्र मत में प्रार्थी का मामला औद्योगिक विवाद अधिनियम की धारा 2 (oo) (bb) के तहत छंटनी की परिभाषा में नहीं आता है। श्रमिक की ओर से प्रस्तुत किए गए न्यायिक दृष्टांत वर्तमान मामले के तथ्य व परिस्थितियों से भिन्न होने के कारण कोई मदद नहीं करते हैं। अतः अप्रार्थी द्वारा अधिनियम की धारा 25 (f) का उल्लंघन किया हो, ऐसा प्रकट नहीं होता है।

19. श्रमिक के विद्वान प्रतिनिधि का तर्क है कि श्रमिक द्वारा अप्रार्थी के यहां 240 दिन से अधिक कार्य किया है, जिसके संबंध में न तो घरेलू जांच की गई है, और न ही एक माह का वेतन नोटिस दिया गया है। जबकि अप्रार्थी के विद्वान प्रतिनिधि का तर्क है कि श्रमिक ने उनके समक्ष एक वर्ष में 240 दिन से अधिक कार्य ही नहीं किया है।

20. इस संबंध में श्रमिक की ओर से प्रस्तुत किए गए न्यायिक दृष्टांत 2010 Lab I.C. 1089 Director Fisheries Terminal Division Vs Bhikubhai Meghajibhai Chavda के मामले में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है कि जहां श्रमिक को दैनिक वेतन पर लिया गया, तब उसके लिए शास्कीय दस्तावेज जैसे मस्ट्रैल व अन्य की पहुंच बहुत मुश्किल है, और जब श्रमिक ने एक वर्ष में 240 दिन कार्य करना कहा है, तब नियोक्ता पर वह सिद्धिभार है कि वह साबित करे कि श्रमिक ने एक वर्ष में 240 दिन कार्य नहीं किया है। उक्त मामले में नियोक्ता के पास श्रमिक से सेवा संबंधी सम्पूर्ण दस्तावेज अपने पास होते हुए भी श्रम न्यायालय के निर्देश के बावजूद प्रस्तुत नहीं किए और जो प्रस्तुत किए, वे विशेषाभाषी थे।

21. श्रमिक की ओर से प्रस्तुत किए गए अन्य न्यायिक दृष्टांत 2905 (3) WLC 430 Manager, M/s Mittal Siss Ventaring Company Vs Chetna Ram & Another के मामले में जहां नियोजन के विरुद्ध पंजीका, वेतन पंजीका प्रस्तुत नहीं की, तब श्रम न्यायालय के नियोजन के विरुद्ध प्रतिकूल उपधारण की, उसे माननीय राजस्थान उच्च न्यायालय की ओर से ऐसे दस्तावेज प्रस्तुत करने की कोई प्रार्थना नहीं की गई है न ही अधिकरण ने अप्रार्थी को ऐसे दस्तावेज पेश करने के लिए निर्देशित किया है। अतः उक्त न्यायिक दृष्टांत वर्तमान मामले के तथ्य व परिस्थितियों से भिन्न होने के कारण श्रमिक की कोई मदद नहीं करते हैं।

22. (2006) 1 S.C.C. 106 R.M. Mellatty Vs Asstt. Executive Engineer के मामले में माननीय उच्चतम न्यायालय ने यह निर्धारित किया है कि श्रमिक ने किसी संस्थान में एक वर्ष में 240 दिन या उससे अधिक कार्य किया है, यह सिद्ध करने का भार श्रमिक पर ही है, जिसे वह मौखिक और दस्तावेजी साक्ष्य प्रस्तुत कर तथा नियोक्ता से दस्तावेज तलब कर साबित कर सकता है।

23. J.T. 2002 (2) S.C.C. 238 The Range Forest Officer Vs S.T. Hadimani एवं 2004 (8) S.C.C. 195 Municipal Corporation, Faridabad Shri Niwas के मामलों में माननीय उच्चतम न्यायालय ने ऐसा ही सिद्धान्त प्रतिपादित किया है। साथ ही यह भी निर्धारित किया है कि केवल शपथ पत्र प्रस्तुत करना ही पर्याप्त नहीं है।

24. वर्तमान मामले में श्रमिक ने अप्रार्थी के यहां दिनांक 12.04.1989 से जनवरी, 92 तक कार्य करना और दिनांक 01.02.1992 को उसकी सेवाएं समाप्त करने का कथन किया है, लेकिन इस तथ्य को साबित करने के लिए श्रमिक ने अपने शपथ पत्र के अलावा अन्य कोई साक्ष्य प्रस्तुत नहीं की है। जबकि अप्रार्थी ने श्रमिक को निश्चित कार्य और अवधि के लिए ठेके पर बाग-बगीचे के रख-रखाव के लिए रखना कहा है। श्रमिक की ओर से अपनी मौखिक साक्ष्य के अलावा अन्य कोई साक्ष्य प्रस्तुत नहीं की है, और न ही अप्रार्थी से किन्हीं दस्तावेजों की तभी से प्रार्थना की है। अतः मेरे विनम्र मत में श्रमिक यह साबित नहीं कर पाया है कि उन्हें अपनी यहां एक वर्ष में लगातार 240 या उससे अधिक दिन कार्य किया है। ऐसी स्थिति में अप्रार्थी की ओर से प्रस्तुत किए गए न्यायिक दृष्टांतों को दृष्टिगत रखते हुए प्रार्थी की ओर से प्रस्तुत किए गए न्यायिक दृष्टांत वर्तमान मामले में तथ्य व परिस्थितियों से भिन्न होने के कारण कोई मदद नहीं करते हैं।

25. अतः उपरोक्त विवेचन के अनुसार मेरे विनम्र मत में श्रमिक का यह मामला औद्योगिक विवाद अधिनियम की धारा 26 (1) के तहत छटनी की श्रेणी में नहीं आता है, न ही यह स्पष्ट हो पाया है कि प्रार्थी की अप्रार्थी द्वारा दिनांक 01.02.1992 के आदेश से सेवाएं समाप्त की हो। अतः वह किसी तरह की सहायता प्राप्त करने का अधिकारी नहीं है।

26. उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अधिनिर्णय पारित किया जाता है:-

अधिनिर्णय

27. श्रमिक प्रहलाद मीणा पुत्र किशना मीणा, निवासी संतोषपुरा, तहसील - चाकसू, जिला-जयपुर, बी-18, बी.जे.पी. कॉलोनी, टैंक

फाटक, जयपुर की ओर से प्रस्तुत स्टेटमेंट ऑफ क्लेम अस्वीकार किया जाकर खारिज किया जाता है अप्रार्थी प्रबंधन द्वारा प्रार्थी प्रहलाद मीणा की दिनांक 01.02.1992 को सेवामुक्त करना ही साबित नहीं है। अतः श्रमिक किसी तरह की राहत पाने का अधिकारी नहीं है।

केदार लाल गुप्ता, न्यायाधीश

नई दिल्ली, 11 अगस्त, 2015

का०आ० 1623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीफोन जिले इंजीनियर, भरतपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ सं० 68/1995) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.08.2015 को प्राप्त हुआ था।

[सं० एल-42012/161/94-आईआर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2015

S.O. 1623.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. 68/1995) of the Central Government Industrial Tribunal-cum Labour Court, Jaipur now as show in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom District Engineer, Bharatpur and their workman, which was received by the Central Government on 11.08.2015.

[No. L-42012/161/94-IR (DU)]

P.K. VENUGOPAL, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 68/1995

रैफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-42012/161/94-आई. आर. (डीयू) दिनांक 16.11.1995

श्री कैलाश प्रसाद शर्मा पुत्र श्री बुद्धी लाल शर्मा, मथुरा दरवाजा बाहर, गोलबाग रोड, भरतपुर, राजस्थान।

—प्रार्थी

बनाम

दि टेलीकाम डिस्ट्रिक्ट इंजीनियर, भरतपुर

—अप्रार्थी

उपस्थित

पीठासीन अधिकारी श्री हेमन्त कुमार जैन, आर. एच. जे. एस.

प्रार्थी की ओर से:

श्री आर. सी. जैन

अप्रार्थी की ओर से:

कोई उपस्थित नहीं

दिनांक अवार्ड: 08.07.2014

अवार्ड

भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक एल-42012/161/94-आईआर(डीयू) दिनांक 16.11.1995 निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

"Whether the action of the management of T.D.E. Bharatpur in terminating the service of Shri Kailash Prasad Sharma, an unskilled labour *w.e.f.* 01.09.84 is legal and Justified? If not, to what relief the workman is entitled to?"

2. प्रार्थी श्रमिक की ओर से स्टेटमेंट ऑफ क्लेम पेश कर कथन किया कि प्रार्थी श्रमिक की भर्ती जरिये साक्षात्कार दिनांक 02.08.82 को की गयी, जिससे प्रार्थी को विपक्षी के पत्र दिनांक 26.08.82 से कार्य पर लिया गया। प्रार्थी दिनांक 01.11.82 से 31.08.84 तक विपक्षी के अधीन लगातार कार्यरत रहा। प्रार्थी द्वारा एक वर्ष में विपक्षी के अधीन 240 दिवस से अधिक की सेवा पूर्ण कर चुका था, परंतु विपक्षी द्वारा प्रार्थी को सेवामुक्त करने से पूर्व कोई नोटिस नहीं दिया, एक माह का अग्रिम नोटिस, नोटिस की एवज में एक माह का अग्रिम वेतन और छंटी मुआवजा नहीं दिया गया। विपक्षी द्वारा अधिनियम की धारा 25एफ की पालना नहीं की गयी। प्रार्थी श्रमिक 1 अप्रैल 84 से 18.05.84 तथा माह 6/1984 व 7/1984 में बीमार रहा था। प्रार्थी के बीमार रहने की अवधि भी सेवा में गणनीय है। विपक्षी द्वारा दैनिक अस्थायी कर्मचारी के मैडीकल अवकाश स्वीकृत नहीं होते, यह कहकर अवकाश लौटा दिये। प्रार्थी श्रमिक को सेवासमाप्ति के समय दिनांक 31.08.84 को विपक्षी द्वारा ऐसा कोई पत्र नहीं दिया गया कि प्रार्थी को किस कारण से सेवामुक्त किया जा रहा है। विपक्षी द्वारा प्रार्थी श्रमिक को सेवा से हटाने से पूर्व कोई वरिष्ठता सूची नहीं बनायी गयी, जबकि औद्योगिक विवाद अधिनियम के तहत सेवासमाप्ति के 7 दिवस पूर्व श्रमिकों की वरिष्ठता सूची बनाया जाना आवश्यक है। प्रार्थी श्रमिक दुर्भाग्य से स्थायी होने का हकदार नहीं बनने देने के कारण सेवा से हटाया गया है। प्रार्थी दिनांक 01.09.84 से अनुपस्थित होता तो माह सितम्बर 84 में उसके नाम के अनुपस्थिति अंकित की जाती। प्रार्थी श्रमिक के पत्र दिनांक 18.04.88 पर विभाग द्वारा दिनांक 22.04.88 के पत्र द्वारा श्रमिक को सेवा से हटाने का कारण जूनियर होना अंकित है, जबकि प्रार्थी की सेवामुक्ति के बाद नये श्रमिकों विजय सिंह, ओमप्रकाश को कार्य पर लिया गया है, जो आज भी विपक्षी के यहां कार्यरत है। नये श्रमिकों को लगाने से पूर्व प्रार्थी श्रमिक को कोई पत्र नहीं भेजा गया। प्रार्थी श्रमिक को कोई चार्जशीट व स्पष्टीकरण नहीं दिया गया और न ही उसके विरुद्ध कोई जांच की गयी। प्रार्थी सेवा समाप्ति से बेरोजगार है तथा प्रार्थी की सेवामुक्ति विपक्षी की अनफेयर लेबर प्रोक्टिस है। अतः प्रार्थी श्रमिक को दिनांक 01.09.84 से लगातार सेवा में मानते हुये पूर्ण वेतन भत्तों, लाभों एवं परिलाभों सहित सेवा में श्रमिक के रूप में बहाल किया जावे।

3. अप्रार्थीगण द्वारा प्रारंभिक आपत्ति करते हुये कथन किया कि प्रार्थी द्वारा प्रस्तुत क्लेम न्यायाधिकरण के समक्ष पोषणीय नहीं है। विपक्षी संस्थान औद्योगिक संस्थान नहीं है। प्रार्थी द्वारा विवाद 8 वर्ष की देरी से उठाया गया है। गुणावगुण पर विपक्षी का कथन है कि प्रार्थी माह अगस्त 84 के बाद स्वतः ही बिना किसी सूचना के कार्य से अनुपस्थित रहा।

प्रार्थी को दैनिक वेतन भोगी कर्मचारी के आधार पर आकस्मिक कार्य की उपलब्धता पर आकस्मिक आधार पर लगाया गया था। विभागीय नियमानुसार दैनिक वेतन भोगी श्रमिक द्वारा वास्तविक कार्य के दिवस ही सेवा में गिने जाते हैं। प्रार्थी द्वारा अपनी बीमारी के संबंध में कोई प्रमाण पत्र प्रस्तुत नहीं किया गया। प्रार्थी को विपक्षी कार्यालय अभिलेख अनुसार तथाकथित पत्र दिनांक 28.4.88 कभी नहीं दिया गया। प्रार्थी स्वयं बिना किसी सूचना के सेवा से अनुपस्थित रहा है, अतः उसके सेवामुक्तकरण का कोई प्रश्न ही नहीं उठता है। अतः प्रार्थी द्वारा प्रस्तुत क्लेम खारिज किये जाने योग्य है।

4. विपक्षी की ओर से श्री महेश प्रसाद गुप्ता साक्ष्य में परीक्षित हुये हैं। प्रार्थी की ओर से स्वयं प्रार्थी कैलाश चंद शर्मा साक्ष्य से परीक्षित हुआ है। अप्रार्थी प्रतिनिधि द्वारा जिरह की गयी है।

5. विपक्षी की ओर से कोई उपस्थित नहीं होने पर प्रार्थी प्रतिनिधि की बहस सुनी गयी। पत्रावली का अवलोकन किया गया।

6. प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी दिनांक 01.11.82 से 31.08.84 तक विपक्षी के अधीन कार्यरत रहा है। इस अवधि में दिनांक 01.04.84 से 18.05.84 तथा दिनांक 31.05.84 से 31.07.84 तक बीमार रहा, जिससे बीमारी संबंधी प्रमाण पत्र प्रदर्श डब्ल्यू 1 लगायत 2 तथा 6 लगायत 11 से प्रमाणित है। प्रार्थी के बीमार रहने की अवधि भी अधिनियम की धारा 25बी के अनुसार माने जाने योग्य है। अन्यथा भी प्रार्थी द्वारा एक ब्लॉक वर्ष में 240 दिन से अधिक की सेवा की है। प्रार्थी श्रमिक को सेवामुक्त करने से पूर्व विपक्षी द्वारा 25एफ की पालना नहीं की गयी। विपक्षी के पत्र दिनांक 28.04.88 द्वारा स्पष्ट है कि प्रार्थी को जूनियर होने के नाम पर हटाया गया है, इस तथ्य को विपक्षी की साक्ष्य ने भी स्वीकार किया है। अतः विपक्षी का यह कथन कि प्रार्थी काम छोड़कर चला गया, माने जाने योग्य नहीं है। प्रार्थी को हटाये जाते समय औद्योगिक अधिनियम की धारा 25जी व नियम 77 की पालना नहीं की गयी। विपक्षी के गवाह ने जिरह में यह स्वीकार किया है कि प्रार्थी से जूनियर सर्व श्री भगवान सिंह पुत्र श्री हीरा सिंह, भगवान सिंह पुत्र श्री मुरारी, महाराज सिंह, दीपचंद व ओमप्रकाश को नहीं हटाया गया और न ही प्रार्थी को हटाये जाने से पूर्व कोई वरिष्ठता सूची जारी की गयी। विपक्षी संस्थान उद्योग की परिभाषा में आता है। प्रार्थी द्वारा विवाद देरी से उठाये जाने की आपत्ति की गयी है, यह बिन्दु पूर्व में निर्णित हो चुका है। केन्द्र सरकार द्वारा देरी से विवाद उठाये जाने के कारण विवाद में न्यायनिर्णयार्थ अग्रेषित नहीं करने पर उसके आदेश दिनांक 24.08.94 को माननीय उच्च न्यायालय में याचिका दायर करने पर माननीय उच्च न्यायालय के निर्देशों के अनुरूप विवाद को न्यायनिर्णयार्थ अग्रेषित किया गया है। अन्यथा भी देरी के आधार पर रेफरेंस को खारिज नहीं किया जा सकता। प्रार्थी की सेवामुक्ति अधिनियम की धारा 25एफ एवं 25 जी की पालना किये बिना की गयी है। माननीय सर्वोच्च न्यायालय द्वारा डेली वेजेज केजुअल लेबर अन्डर पीएंडटी डिपार्टमेंट बनाम यूनियन ऑफ इंडिया के प्रकरण में दिनांक 27.10.87 को पारित निर्णय के अनुसार बनाई गई स्कीम के अंतर्गत प्रार्थी एक वर्ष कर लेने के कारण नियमित अस्थायी मजदूर हो जाता है व आगे नियमितीकरण का लाभ प्राप्त करता है। अतः प्रार्थी श्रमिक पिछला संपूर्ण वेतन व अन्य सभी परिलाभों सहित सेवा में बहाल

किये जाने का अधिकारी है। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं:-

1. एस० बी० सिविल रिट पिटीसन नंबर 2813/96 यूनियन ऑफ इंडिया बनाम लक्ष्मीनारायण में निर्णय दिनांक 12.02.98
2. आर एल डबल्यू 1995 (1) 704 चीफ इंजीनियर इरीगेशन बनाम कमलेश व अन्य।
3. 2010 (124) एफएलआर 285 राज० एग्रीकल्चर यूनियनर्सिटी बगैरह बनाम इण्डस्ट्रियल ट्रिब्यूनल व अन्य।
4. 2010 II एलएल जे 277 (एस०सी०) हरजिन्द्र सिंह बनाम पंजाब स्टेट वेयरहाउसिंग कारपोरेशन।
5. 2011(130) एल एफ आर 337 देवेन्द्र सिंह बनाम मुनिशिपल कार्डसिल सानौर।
6. डीबी स्पेशल अपील रिट नंबर 1551/2012 यूको बैंक व अन्य बनाम नरेन्द्र कुमार शर्मा में निर्णय दिनांक 09.01.13
7. एस०बी० सिविल रिट पिटीसन नंबर 2484/04 सूरज मल बनाम स्टेट ऑफ राज० व अन्य में निर्णय दिनांक 21.05.07
8. 1994 II एलएल जे 689 गौरीशंकर विश्वकर्मा बनाम ईगल स्प्रींग इण्डस्ट्रीज प्रा० लि० व अन्य।
9. 2001 II एल एल जे 1592 स्टेट ऑफ हरियाणा बनाम विजय कुमार व अन्य।
10. डी० बी० स्पेशल रिट पिटीसन नंबर 129/87 मदन सिंह बनाम जज लेबर कोर्ट में निर्णय दिनांक 22.04.87
11. 1999 ए आई आर-एस सी डबल्यू 694 (एस०सी०) समिस्था दुबे बनाम सिटी बोर्ड इटावा।
12. 1991 (1) आर एल आर 577 नार्थन रेलवे न्यू देहली बनाम जज सीआईटी।

7. प्रार्थी प्रतिनिधि के तर्कों का मनन किया एवं पत्रावली का गहनता से अवलोकन व अध्ययन किया गया। अप्रार्थी की ओर से कोई उपस्थित नहीं हुआ है। चूंकि उक्त रेफरेंस राज्य सरकार द्वारा अधिनिर्णय हेतु प्रेषित किया गया है। अतः प्रकरण का गुणावगुण पर मेरा विनिश्चय निम्न प्रकार से है। मेरे विनम्र मत में निष्कर्ष पर पहुंचने से पूर्व दोनों पक्षों की ओर से प्रस्तुत गवाहों के बयानों की विवेचना करना उचित होगा।

8. प्रार्थी कैलाश प्रसाद शर्मा ने अपने शपथ पत्र के मुख्य परीक्षण में स्टेटमेंट ऑफ क्लेम में वर्णित तथ्यों को दोहराते हुये कथन किया है कि वह दिनांक 01.11.82 से 31.08.84 तक विपक्षी के अधीन लगातार कार्यरत रहा। वह एक वर्ष में 240 दिवस से अधिक की सेवा पूर्ण कर चुका है। मेरी बीमारी व फिटनेस के प्रमाण पत्र प्रदर्श डबल्यू 1 व 2 है। दिनांक 28.04.88 का विपक्षी का पत्र जिसमें उसे जूनियर होने के कारण हटाया जाना अंकित है, प्रदर्श डबल्यू-4 है। विपक्षी का दिनांक 01.12.87 का पत्र प्रदर्श डबल्यू-3 है। विपक्षी का दिनांक 16.04.88 का पत्र प्रदर्श डबल्यू-5 है, जिसके द्वारा विपक्षी ने मेरा संपूर्ण सेवा

विवरण मांगा है। विपक्षी द्वारा मेरी सेवा समाप्ति के बाद नये श्रमिकों विजय सिंह, ओमप्रकाश वगैरह को कार्य पर लिया है, जो आज भी विपक्षी के अधीन कार्यरत है। जिरह में प्रार्थी ने स्वीकार किया है कि उसे नियुक्ति आदेश दिया था, जो न्यायालय पत्रावली में नहीं है। गवाह ने प्रदर्श डबल्यू-4 प्राप्त होना स्वीकार किया है तथा इसके बाद की लिखापट्टी के कागज कोर्ट में पेश नहीं होना बताया है। बीमारी के कारण अवकाश पर जाने से पूर्व अवकाश प्रार्थना पत्र देना बताया है लेकिन यह प्रार्थना पत्र कोर्ट में पेश नहीं करना स्वीकार किया है। विपक्षी संस्थान में सन् 1988 में भी प्रार्थी से जूनियर श्रमिक काम नहीं कर रहे हो, इस कथन को गलत बताया है।

9. विपक्षी की ओर से प्रस्तुत गवाह श्री महेश कुमार गुप्ता ने अपने शपथ पत्र के मुख्य परीक्षण में स्टेटमेंट ऑफ क्लेम के जवाब को दोहराते हुये कथन किया है कि प्रार्थी स्वयं बिना किसी सूचना को कार्य से अनुपस्थित हो गया और अगस्त 1984 तक कार्य पर नहीं लौटा, इसलिये उसका नाम सितम्बर 1984 के मस्टरोल में नहीं लिखा गया। प्रार्थी श्रमिक की सेवायें इस कार्यालय द्वारा समाप्त नहीं की गयी। कैजुअल लेबर के मामले में छुट्टियों के दिनों को नहीं गिना जाता है, विभागीय नियमानुसार लगातार सेवा में कार्य पर उपस्थित रहने के दिन ही गिने जाते हैं। प्रार्थी स्वयं बिना सूचना के अनुपस्थित हुआ है, अतः सेवासमाप्ति व वरिष्ठता सूची देने का प्रश्न ही नहीं उठता। प्रार्थी श्रमिक द्वारा विवाद 8 वर्ष की देरी से उठाया गया है। जिरह में उक्त गवाह ने अगस्त 1984 तक प्रार्थी श्रमिक के अनुपस्थित होने के कथन को असत्य बताया है। गवाह ने प्रार्थी के 31 अगस्त 84 को उपस्थित होने के बाद भी 1 सितम्बर को नाम नहीं लिखे जाने के बारे में पता नहीं होना कथन किया है। साथ ही आगे कहा है कि श्रमिक का नाम सितम्बर माह में 1 तारीख को प्रार्थी श्रमिक अनुपस्थित होगा, जिससे उसका नाम नहीं लिख गया। गवाह ने विपक्षी संस्थान में रविवार तथा अन्य अवकाशों की गणना 240 दिन में नहीं गिने जाने का नियम होना बताया है, लेकिन ऐसा कोई नियम पेश नहीं करना कहा है। गवाह ने प्रार्थी के दैनिक वेतन भोगी कर्मचारी होने के कारण उसे कोई नोटिस आरोप पत्र, स्पष्टीकरण, नोटिस पे, छंटी मुआवजा नहीं देना बताया है। प्रदर्श डबल्यू 6 लगायत 11 एसडीओ फोन्स भरतपुर द्वारा जारी करना बताया है। गवाह ने श्रमिक भगवान सिंह पुत्र मुरारीलाल सबसे पहले सितम्बर 1983 में दीपचंद 1984 में, भगवान सिंह पुत्र हीरा सिंह सबसे पहले अगस्त 84 में काम पर आये थे। प्रदर्श डबल्यू 5 कार्यालय के सक्षम अधिकारी द्वारा जारी होना तथा इसका श्रमिक द्वारा भेजा गया जवाब व अन्य कार्यवाही के बारे में पत्रावली देखकर ही बता सकना कथन किया है। गवाह ने प्रदर्श डबल्यू 4 के द्वारा श्रमिक की सेवा से हटाने का जो कारण बताया है, वह सही होना तथा उसी कारण से हटाया जाना स्वीकार किया है।

10. विपक्षी द्वारा प्रस्तुत जवाब में प्रार्थी श्रमिक द्वारा विवाद 8 वर्ष की देरी से उठाये जाने के संबंध में प्रारम्भिक आपत्ति की गयी है। इस संबंध में केन्द्र सरकार द्वारा विवाद 8 वर्ष की देरी से उठाये जाने पर प्रार्थी का विवाद पत्रांक 40012/161/94 दिनांक 24.08.94 द्वारा भेजने से इंकार किया गया है। जिसके विरुद्ध प्रार्थी श्रमिक द्वारा माननीय उच्च न्यायालय में याचिका दायर की जाने पर माननीय उच्च न्यायालय द्वारा केन्द्र सरकार के उक्त पत्र दिनांक 24.08.94 को रद्द किया गया है। जिसके उपरांत

केन्द्र सरकार द्वारा नये सिरे से उक्त रेफरेंस अधिनिर्णय हेतु इस न्यायाधिकरण को प्रेषित किया है। केन्द्र सरकार द्वारा इस समूल प्रक्रिया का वर्णन भी अपने रेफरेंस में किया गया है। अतः केन्द्र सरकार द्वारा माननीय उच्च न्यायालय के आदेश के उपरांत अधिनिर्णय हेतु प्रार्थी का उक्त विवाद इस न्यायाधिकरण को प्रेषित किया है। जिसे 8 वर्ष की देरी नहीं मानी जा सकती। अतः विपक्षी की उक्त प्रारम्भिक आपत्ति स्वीकार की जाने योग्य नहीं है।

11. पत्रावली के अवलोकन से प्रकट होता है कि विपक्षी द्वारा प्रार्थी की कार्य पर उपस्थित के संबंध में जो प्रमाण प्रदर्श डबल्यू 6 लगायत 11 जारी किये गये हैं, उनमें से प्रदर्श डबल्यू 6 के अनुसार प्रार्थी श्रमिक दिनांक 01.11.82 से विपक्षी के अधीन मस्टरोल पर कार्यरत रहा है। प्रार्थी द्वारा अपनी नियुक्ति साक्षात्कार के माध्यम से होना बताया है, लेकिन प्रार्थी की ओर से जो दस्तावेज पेश किये गये हैं, उनमें नियुक्ति आदेश नहीं है, प्रदर्श डबल्यू 6 लगायत 11 के अवलोकन से यह स्पष्ट है कि प्रार्थी द्वारा 240 दिवस से अधिक कार्य किया गया है, लेकिन प्रार्थी दिनांक 01.04.84 से 18.05.84, 30.05.84 से 31.07.84 तक बीमार होने के कारण कार्य पर उपस्थित नहीं होना बताया है, इसके संबंध में प्रार्थी द्वारा चिकित्सा प्रमाण पत्र प्रदर्श डबल्यू 1 व डबल्यू 2 पेश किये गये हैं। लेकिन प्रार्थी श्रमिक द्वारा अपने शपथ पत्र एवं क्लेम में यह कहीं वर्णित नहीं किया है कि वह किस बीमारी से ग्रसित था और अपनी बीमारी के संबंध में चिकित्सक द्वारा जारी पर्ची मैडीकल बिलों की प्रति आदि दस्तावेज पेश नहीं किये हैं। प्रार्थी द्वारा अवकाश पर जाने से पूर्व कोई प्रार्थना पत्र विपक्ष को दिया गया हो, इसकी प्रति भी न्यायाधिकरण के समक्ष पेश नहीं करना जरूरत में स्वीकार किया है। विपक्षी की ओर से प्रस्तुत गवाह ने प्रदर्श डबल्यू 4 में अंकित कारण से ही प्रार्थी श्रमिक को सेवा से हटाया जाना तथा वर्णित तथ्य सही होना बताया है। प्रदर्श डबल्यू 4 में यह स्पष्ट रूप से अंकित किया गया है कि प्रार्थी श्रमिक को जूनियर होने के कारण से हटाया गया है। जबकि प्रार्थी को हटाने के पूर्व प्रार्थी श्रमिक से जूनियर श्रमिक भी विपक्षी संस्थान में काम कर रहे थे। प्रार्थी श्रमिक द्वारा एक वर्ष में 240 दिवस से अधिक कार्य पूर्ण किया गया है, जो उसके बीमार रहने की अवधि को जोड़ते हुये होती है। यद्यपि प्रार्थी द्वारा अपनी बीमारी के संबंध में केवल चिकित्सा प्रमाण पत्र ही पेश किया गया है, जबकि चिकित्सक पर्ची, मैडीकल बिल, अवकाश पर जाने से पूर्व अवकाश प्रार्थना पत्र की प्रति, अवकाश बढ़ाने हेतु प्रार्थी श्रमिक द्वारा कोई पत्राचार किया गया हो, इस संबंध में कोई भी प्रार्थना पत्र की प्रति अथवा डाक रसीद आदि पेश नहीं किये हैं, तथापि केवल मात्र मैडीकल प्रमाण पत्र को मानते हुये यह प्रमाणित माना जाता है कि प्रार्थी श्रमिक ने विगत वर्ष में 240 दिवस से अधिक कार्य किया है। प्रार्थी श्रमिक द्वारा 240 दिवस पूर्ण किये जाने के उपरांत भी विपक्षी द्वारा प्रार्थी को सेवा से हटाने से पूर्व कोई नोटिस, नोटिस पे, छंटनी मुआवजा नहीं दिया गया, जो औद्योगिक विवाद अधिनियम, 1947 की धारा 25 एफ का उल्लंघन है। जो उचित नहीं है। अतः अप्रार्थी विभाग द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ की पालना नहीं किया जाना प्रकट होता है।

12. माननीय सर्वोच्च न्यायालय द्वारा न्यायिक दृष्टांत 2010(III) डी०एन०जे० (एस०सी०) 1019 सीनियर सुप्रीटेंडेंट टेलीग्राफ (ट्रेफिक)

बनाम संतोष कुमार तथा एस०बी० सी० डबल्यू०, नंबर 281/2012 किशन व अन्य बनाम जज लेबर कोर्ट संख्या 02 में निर्णय दिनांक 08.01.2012 में माननीय उच्च न्यायालय द्वारा अभिनिर्धारित किया गया है कि इस तरह के दैनिक वेतन भोगी श्रमिकगण जिन्होंने 1-2 वर्ष ही लघु अवधि के लिये कार्य किया हो तो उनको सेवा में वापिस लिये जाने का आदेश तथा बकाया वेतन भत्तों के दिलाये जाने के आदेश को उचित नहीं माना है, बल्कि ऐसे मामलों में श्रमिकगणों को एकमुश्त क्षतिपूर्ति की राशि दिया जाना उचित माना है। विचारणीय प्रकरण में भी प्रार्थी श्रमिक द्वारा 1-2 वर्ष की लघु अवधि के लिये काम किया गया है। अतः माननीय सर्वोच्च न्यायालय तथा माननीय उच्च न्यायालय के नवीनतम निष्कर्षों को मद्देनजर रखते हुये प्रार्थी श्रमिक को पिछला तीन एवं अन्य सभी लाभ दिया जाना तथा सेवा में पुनः नियोजित करना उचित नहीं समझता हूँ। मेरे विनम्र मत में उक्त दोनों न्यायिक दृष्टांतों के प्रकाश में प्रार्थी श्रमिक को पचास हजार रुपये क्षतिपूर्ति राशि के रूप में दिये जाने से न्याय के उद्देश्य की पूर्ति हो जायेगी। 2010(III) डी०एन०जे० (एस०सी०) 1019 सीनियर सुप्रीटेंडेंट टेलीग्राफ (ट्रेफिक) बनाम संतोष कुमार के पैरा संख्या 08 इस बारे में महत्वपूर्ण दिशा-निर्देश प्रदान करता है। इसी तरह एस०बी० सी० डबल्यू० नंबर 281/2012 किशन व अन्य बनाम जज लेबर कोर्ट संख्या 02 में निर्णय दिनांक 08.01.2012 के अन्तिम दो पैराग्राफ में भी इस बारे में मार्गदर्शन प्रदान करते हैं। लिहाजा इन नवीनतम न्यायिक दृष्टांतों में प्रदान किए गये दिशा-निर्देशों के मुताबिक प्रार्थी श्रमिक को केवल पचास हजार रुपये क्षतिपूर्ति राशि अदा कर देने से न्याय के उद्देश्य की पूर्ति हो जायेगी।

13. प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांतों का मैंने बारीकी से अध्ययन विनम्रतापूर्वक अवलोकन किया। प्रार्थी प्रतिनिधि द्वारा न्यायिक दृष्टांत प्रस्तुत कर श्रमिक को पुनः सेवा में लिये जाने तथा पिछले समस्त वेतन एवं अन्य सभी लाभ दिलाये जाने की प्रार्थना की है। इस संबंध में प्रार्थी प्रतिनिधि द्वारा प्रस्तुत दृष्टांतों के तथ्य एवं परिस्थितियाँ हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से भारी, भिन्नता रखते हैं, अतः उक्त सभी न्यायिक दृष्टांत प्रार्थी श्रमिक के केस में लागू नहीं होते हैं।

14. उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अवार्ड पारित किया जाता है:—

अवार्ड

“प्रार्थी श्रमिक श्री कैलाश प्रसाद शर्मा की सेवामुक्ति नियोजक द्वारा औद्योगिक विवाद अधिनियम के प्रावधानों की पालना किये बिना करना उचित व वैद्य नहीं है। चूँकि श्रमिक की सेवामुक्ति से पूर्व विपक्षी नियोजक द्वारा औद्योगिक विवाद अधिनियम 1947 के प्रावधानों की पालना नहीं की गयी है, अतः श्रमिक एकमुश्त क्षतिपूर्ति राशि प्राप्त करने का अधिकारी है। प्रार्थी श्रमिक को पचास हजार रुपये एकमुश्त क्षतिपूर्ति राशि के रूप में दिलाये जाते हैं।”

15. अवार्ड आज दिनांक 08.07.2014 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

हेमन्त कुमार जैन, न्यायाधीश

नई दिल्ली, 12 अगस्त, 2015

का०आ० 1624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 60/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/08/2015 को प्राप्त हुआ था।

[सं० एल-20012/444/1994-आई आर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th August, 2015

S.O. 1624.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award Ref. No. 60/1997) of the Cent. Govt. Indus-Tribunal -cum-Labour Court, No. 1, Dhanbad as shown in the Annexure, in the Industrial dispute between the management of FCI and their workmen, received by the Central Government on 12/08/2015.

[No. L-20012/444/1994-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of
I.D. Act. 1947

Reference: No. 60/1997

Employer in relation to the management of Bhurungia
Project M/s B.C.C.L.
and Their Workman

Present: SHRI R.K. SARAN,
Presiding Officer

Appearances:

For the Employer :- Shre D.K. Verma Advocate

For the workman :- Shre S. Sharma, Advocate

State: Jharkhand Industry: Coal

Dated: 27/7/2015

AWARD

By order No. L-20012/444/1994-IR (C-1) dated 21/02/1997, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the Claim of the Union that Sh. Mangu Kumhar and Thirty other (as per list enclosed) were

working at Bhurungia Project since 1985 is correct? If so, whether these workmen are eligible for regularization by the management of Bhurungia Colliery? If so, to what relief are they entitled?"

ANNEXURE

List of workmen

नाम	मासिक वेतन 1250/-	जमा राशि 62-50
1. मांगु कुम्हार	9.50/-	कुल जमा 32145/-
2. नागेश्वर पासवान	"	"
3. रुसान खानी	"	"
4. झरी खानी	"	"
5. परमेश्वर	"	"
6. साधू खानी	"	"
7. धनेश्वर खानी	"	"
8. गिरजा खानी	"	"
9. घनश्याम	"	"
10. किष्ठा बाउरी	"	"
11. काजल गोप	"	"
12. शंकर सिंह	"	"
13. शिवनाथ खानी	"	"
14. बुधु कुम्हार	"	"
15. धिरज खानी	"	"
16. टुनटुन खानी	"	"
17. बासदेव	"	"
18. बुधन महतो	"	"
19. भुखल खानी	"	"
20. हराधन खानी	"	"
21. भूनेश्वर खानी	"	"
22. झंटू खानी	"	"
23. हारू कुम्हार	"	"
24. गुलू कुम्हार	"	"
25. प्रदीप बनर्जी	"	"
26. बंकिमचंद महतो	"	"
27. लक्ष्मी कान्त महतो	"	"
28. भीमा	"	"
29. बाबूलाल खानी	"	"
30. अशोक	"	"
31. मनोहर	"	"

2. The case is received from the Ministry of Labour on 06.02.1997. After receipt of reference, both parties are noticed, the Sponsoring Union/Workman files their written statement on 14.07.1997. The management also files written statement-cum-rejoinder on 31.07.2000. Both side adduce one witness each on their behalf. Document of workman marked as W-1 & W-2.

3. The short point to be decided in the reference is whether mangu kumhar and 30 others are to be regularised under BCCL in Bhurungia Colliery of Mahuda or not.

4. The workman though submitted that they were working in the colliery, failed to file any I.D. card gate pass or appointment letter and except photo copies of certain document and one certificate, nothing was filed.

5. The management submitted that during conciliation the Ld conciliation officer did not feel it proper to refer the dispute only due to interference of the High Court, it is referred. Fathers name of workman is not before me. The workmen unable to say in evidence, who engaged them. He said that they don't have any appointment letter. They have not produced any I.D. card that they were working in the colliery.

6. This being the situation without any authenticated document, like original I.D. card or other documents, this Tribunal unable to hold that the workmen were working in the colliery. Therefore ordering regularization is not possible.

7. Considering the facts and circumstances of this case, I hold that the claim of the Union that Sh. Mangu Kumhar and Thirty other (as per list enclosed) were working at Bhurungia Project since 1985 is not correct. Accordingly regularization is not possible. He is not entitled to get any relief. Answer of reference is negative.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 12 अगस्त, 2015

कांआ 1625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तुर्कस्थान एअर लाईन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं० 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 16/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/08/2015 को प्राप्त हुआ था।

[सं० एल-11012/11/2011-आई आर (सीएम-1)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 12th August, 2015

S.O. 1625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of M/s. Turkmenistan Air Lines and their workmen, received by the Central Government on 12/08/2015.

[No. L-11012/11/2011-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 16 of 2011. Reference No. L-11012/11/2011-IR(CM-I) dated 24.8.2011.

Shri Ravi Kumar, ex-loader son of Shri Om Prakash, village Baknour, Tehsil Pathankot, District Gurdaspur.

.....Workman

Versus

1. The General Manager, Turkmenistan Air Lines, N-1, BMC House Middle Circle Cannaught Place, New Delhi.
2. Station Manager, Turkmenistan Airlines, A-203, Ranjit Avenue Ajnala, Amritsar (Punjab)

...Respondents

Appearance :

For the workman: Workman in person

For the management: None

Ex-PARTE AWARD

Passed on 31.07.2015

Government of India Ministry of Labour *vide* notification No. L-11012/11/2011-IR(CM-I) dated 24.8.2011 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the General Manager, The General Manager, Turkmenistan Air Lines, N-1, BMC House Middle Circle Cannaught Place, New Delhi & Station Manager, Turkmenistan Airlines, A-203, Ranjit Avenue Ajnala road Amritsar in terminating the services of Shri Ravi Kumar, ex-loader son of Shri Om Prakash, village Baknour, Tehsil Pathankot, District Gurdaspur Punjab *w.e.f.* 17.11.2009 is just valid and legal? To what relief the workman concerned is entitled to?"

2. The workman filed claim statement stating therein that he was employed as loader with the management in April 2000 on a monthly salary of Rs. 2400/- He was also issued ESI Card *w.e.f.* 2.10.2006 in respect of member of the family of the workman. Declaration form was also filled up and in the month of November 2009, the workman was drawing salary of Rs. 5260/- per month. On 17.11.2009 the workman was restrained entry into the premises of the management for doing the job of a loader on false and frivolous ground. It is further pleaded that although the workman has put in more than 240 days of service, yet no notice of termination or charge sheet was issued to the workman. No retrenchment compensation was given to the workman at the time of termination. It is also pleaded that junior to the workman were retained in service and even new recruitments have been made by the management in violation of the provision of the I.D. Act 1947. It is prayed that workman may kindly be ordered to be reinstated in service with continuity and all other attendant benefits including back wages and arrear of salary in the regular pay scale *w.e.f.* the date of his termination *i.e.* 17.11.2009.

3. The management filed written statement. Preliminary objection has been taken that workman had earlier filed an application for the same relief before the Labour Inspector Amritsar and the dues amounting to Rs. 2981/- vide demand draft No. 700797 dated 23.6.2010 were given to the workman towards the full and final settlement of his claim and now the present statement of claim before this court on the same ground involving the same alleged cause of action is legally not maintainable and barred under the law, hence the same deserves to be dismissed. It is also that when the workman was posted as loader, a passenger had made a complaint that Rs. 2000/- illegally charged from him for adjusting his extra baggage and in this illegal activity workman was involved along with other as informed by the CISF. It is further pleaded that earlier also many times, workman indulged in such illegal activities. These acts and omission on the part of the workman amounts to dereliction of duty and are gravest of misconduct and injured and malign the reputation and image of the management in public at International Airport. It is further pleaded that workman got no cause of action. It is also pleaded that workman is habituated to taking liquor while on duty and used to misbehave and used filthy language which constitute grave misconduct. He was also in the habit of demanding money from the old and infirm passenger while providing wheel chairs. The workman was caught by CISF for taking bribe of Rs. 2000/- for which the management prepared show-cause notice but the workman refused to accept and left the office in order to avoid any disciplinary action. The management advised Ravi Kumar to report for duty through his counsel but the intentionally and deliberately failed to report on duty. The workman left the service on his own freewill and volition. It is submitted by the

management that the claim of the workman is belated one and barred by the principles of delay and laches. It is prayed that there is no merit in the reference and the same may be declined.

4. Workman filed rejoinder to the written statement specifically denying the allegation of receiving the DD for Rs. 2981 as full and final settlement of his dues and claim. Rather it is pleaded that the above DD was for salary of 16 days. In rejoinder the workman also specifically controverted the allegation of the management of receiving Rs. 2000/- from the passenger and complaint of CISF.

5. In evidence, the workman placed on record his affidavit. The workman also placed on record documents fifteen in numbers as per detail in index.

6. As none appeared for the management despite opportunities, the management was proceeded ex-parte and affidavit and documents of the workman taken on record in evidence.

7. As there was none for the management, therefore, arguments of the workman were heard. The workman in his submission stated that he worked with the management from April 2000 till 17.11.2009 and his services were illegally terminated without complying with the provisions of the Industrial Disputes Act 1947. No one months notice or pay in lieu of notice and retrenchment compensation has been paid to the workman as per the provisions of law. It is further submitted by the workman that no full and final settlement ever took place. What to say of enquiry even no explanation was ever called by the management. The workman submitted that his termination is gross violation of Section 25F of the I.D. Act 1947 and the management may be directed to reinstate the workman with full back wages with all consequential relief.

8. I have gone through the record of the case. In written statement the management pleaded that workman had earlier filed an application for the same relief before the Labour Inspector Amritsar and the dues amounting to Rs. 2981/- vide demand draft No. 700797 dated 23.6.2010 were given to the workman towards the full and final settlement of his claim and now the present statement of claim before this court on the same ground involving the same alleged cause of action is legally not maintainable and barred under the law, hence the same deserves to be dismissed. It is also pleaded that when the workman was posted as loader, a passenger had made a complaint that Rs. 2000/- illegally charged from him for adjusting his extra baggage and in this illegal activity workman was involved along with other as informed by CISF. It is further pleaded that earlier also many times, workman indulged in such illegal activities. These acts and omission on the part of the workman amounts to dereliction of duty and are gravest of misconduct and injured and malign the reputation and image of the

management in public at International Airport. It is further pleaded that workman got to cause of action. It is also pleaded that workman is habituated to taking liquor while on duty and used to misbehave and used filthy language which constitute grave misconduct. He was also in the habit of demanding money from the old and inform passenger while providing wheel chairs. The workman was caught by CISF for taking bribe of Rs. 2000/- for which the management prepared show-cause notice but the workman refused to accept and left the office in order to avoid any disciplinary action. All these allegations have been leveled by the management. Not a single documents has been filed by the management to substantiate these allegations. In its written statement, the fact that workman worked with the management from April 2000 till 17.11.2009 not denied by the management. He was also not paid any retrenchment compensation and notice or one month pay in lieu of notice. The claim of the workman also not rebutted by the management that junior to the workman were retained in service and new recruitments have been made which is also violation of Section 25G and 25H of the I.D. Act. 1947. If the workman committed misconduct, the management is under obligation to conduct the enquiry. There is no such record filed by the management. Rather the workman substantiated his claim statement by submitting documents. The copy of the draft of Rs. 2981/- which the workman produced on record reveals that it is for the 16 days salary and nowhere on it written as full and final settlement of the claim of the workman.

9. In view of the fact and circumstances of the case, it is well established by the workman that he worked with the management from April 2000 till 17.11.2009 when his services were terminated without following the procedure as prescribed under the Industrial Disputes Act 1947. There is nothing on the record to show that the workman was paid any retrenchment compensation and one month pay in lieu of notice. No enquiry was also held by the management. In view of the above, the termination of the workman w.e.f 17.11.2009 is set aside. The management is directed to reinstate the workman with full back wages along with all consequential benefits within one month from the date of the publication of the award. The reference is answered accordingly.

10. Central Govt. be informed. Soft as well hard copy be sent to the Central Govt. for publication.

Chandigarh

31.07.2015

S. P. SINGH, Presiding Officer

नई दिल्ली, 13 अगस्त, 2015

कांआ 1626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस० सी० एल० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, गोदावरीखनी के पंचाट (संदर्भ संख्या 53/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/08/2015 को प्राप्त हुआ था।

[सं. एल-22013/1/2015-आई आर (सी-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 13th August, 2015

S.O. 1626.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus.Tribunal-cum-Labour Court, Godavarikhani (IT/ID/53/2010) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 13.08.2015.

[No. L-22013/1/2015-IR(C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI.

Present:— SRI G.V. KRISHNAIAH,
Chairman-cum-Presiding Officer

INDUSTRIAL DISPUTE No. 53 OF 2010

Monday, the 18th day of May, 2015

Between:—

Palle Prabhakar, S/o. Posham, Aged about 41 years,
Occ: Ex. Employee, R/o. H.No. 8-3-147, Vinobanagar,
Godavarikhani, Mandal Ramagundam of Karimnagar Dist.
...Petitioner

And

1. The Chief General Manager,
SCC Ltd., Post Srirampur, District Adilabad.
2. The Managing Director,
SCC Ltd. Kothagudem, Dist. Khammam.

...Respondents

This case coming before me for final hearing in the presence of Sri S. Bhagavantha Rao, Advocate for the petitioner and of Sri D. Krishna Murthy, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Tribunal delivered the following:—

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D. Act challenging the dismissal of the petitioner passed by the respondents praying for his reinstatement into service with continuity of service, all attendant benefits and full back wages.

2. Petitioner was dismissed from service by the respondents vide office order dt. 24-10-2007 after holding domestic enquiry on the following charge.

CHARGE:—

"Clause 25.25 - Habitual late attendance or habitual absence from duty without sufficient cause."

3. Petitioner challenges his dismissal on the following grounds:—

- (a) The petitioner was appointed as Badli Filler on 20-07-1999 by the 1st respondent.
- (b) The petitioner discharged his duties to the fullest satisfaction of superiors till his removal from service and his services are governed by various standings orders of SC Company. The petitioner put in seven years of service in the company and he is entitled to seek protection U/S. 25 H of ID Act and the petitioner was not reviewed by High Power Committee to consider under absenteeism cases.
- (c) The petitioner put in 145 days of attendance in 2003, 136 days in 2004, 118 days in 2005 and only 57 musters in 2006. The petitioner participated in the enquiry. He stated that his absence due to ill-health of his father and also the death of his elder brother.
- (d) The enquiry conducted by the respondents in null and void as it was not conducted properly.
- (e) Punishment of dismissal from service is extremely harsh, highly excessive and shockingly disproportionate.

Hence, the petitioner prays to allow the petition.

4. In response to this challenge, respondents filed counter justifying the dismissal of the petitioner. The respondents company being mining industry is a Central Government subject and the petitioner ought to have approached the CGIT, Hyderabad. This petition is not maintainable before this Court and is liable to be dismissed.

The petitioner was appointed in the respondents company as Badli Filler on 25-08-2000 on compassionate grounds. The petitioner was a chronic absentee and was issued charge sheet for putting in only 57 musters in the year 2006. The following attendance particulars of the petitioner indicate the fact that the petitioner was not regular to his duties and he had not put in required 190 musters during the period from 2001-2006.

Sl. No.	Year	No. of musters
1.	2001	126
2.	2002	98
3.	2003	145
4.	2004	136
5.	2005	118
6.	2006	57
7.	Aug 2007	55

During the period from January, 2006 to December, 2006, the petitioner had put in only 57 musters. As the above act amounted to misconduct under Standing Orders Clause No. 25.25 of the company, the petitioner was charge sheeted. After considering the documentary evidence and other evidence on record, the Enquiry Officer submitted his unbiased report holding that the petitioner is guilty of misconduct under company standing orders. The petitioner was issued show-cause notice.

5. The respondents company after considering the past record of the petitioner and on findings that there were no extenuating circumstances for taking a lenient view was constrained to dismiss the petitioner from service. The respondents company conducted the enquiry proceedings duly in accordance with the principles of natural justice and law giving full opportunity to the petitioner. Therefore, the respondents pray to dismiss the petition without granting any relief to the petitioner.

6. During the course of hearing, Ex. W-1 to Ex. W-4 and Ex. M-1 to Ex. M-10 are marked.

7. Heard both sides. Perused the material papers on record.

8. On consideration of respective contentions of the parties, the following points require to be determined:—

1. "Whether this Tribunal has got jurisdiction?"

2. "Whether the punishment of dismissal of the petitioner is justified and proportionate?"

9. POINT No: 1

As per the Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India, this Court has got jurisdiction to entertain the dispute raised by the petitioner. Hence, the point is accordingly answered in favour of the petitioner.

10. POINT No: 2

Charge sheet is marked as Ex. M-1 and Explanation of the petitioner there-to is marked as Ex. M-2. The explanation under Ex. M-2 reveals that since health of his

father was not good and due to the demise of his brother, petitioner absented to this duties. He prayed to excuse him and assured regular attendance in future. Petitioner participated in the domestic enquiry and his settlement is on the same line as under Ex. M-2. During cross examination petitioner admitted that he did not inform ill-health of his father, death of his brother and his absence to the respondents. Report of the enquiry officer marked as Ex. M-6 shows that during the year 2003, petitioner put-in 145 musters, during 2004 he put-in 136 musters and during 2005 he put-in 118 musters. During the year 2006 he put-in 57 musters only. As per the enquiry statement of the petitioner at page No. 5 under Ex. M-6 and his explanation to the charge sheet under Ex. M-2, petitioner absented to duties due to ill-health of his father and demise of his brother. He assured that he will attend to his duties regularly in future.

11. In a decision reported in Division bench Judgment of Gujarat High Court reported in 1982 LAB. IC. 1031 between: R.M., Parmar Vrs Gujarat Electricity Board, the following guidelines were laid down in the matter of inflicting punishment of discharge and dismissal:—

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.

2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.

3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.

4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal

cannot be imposed. If lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. His is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.

6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.

8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

12. It is contended by the learned counsel for the petitioner that a Badli Filler, petitioner was appointed in the respondents company as Badli Filler on 25-8-2000 on compassionate grounds and till the year 2005, he put-in best attendance. Due to domestic problems already put-

forth by the petitioner to the respondents in his explanation to the charge sheet and during enquiry, he could not attend to his duties during the year 2006 for 100 musters and put-in 57 musters. Hence, he contended that extreme punishment of dismissal is not justified. On the other hand it is argued on behalf of the learned counsel for the respondents that the petitioner was a chronic absentee, he had put-in only 57 musters in the year 2006, that even after counseling and undertaking marked as Ex.M-3, he did not attend to duties during the year 2006 and as such he was dismissed from service.

13. Admittedly petitioner joined in the year 2000 and till 2005, he had put-in good attendance as shown in the charge sheet marked as Ex. M-2 and enquiry report marked as Ex. M-6. He may not have been able to attend to his duties during 2006 due to personal problems explained by the petitioner in his reply to charge sheet and during enquiry. Therefore, in view of my above discussion and documentary evidence on record, I hold that this is a fit case where this Court can exercise discretion U/Sec. 11 of ID Act and the petitioner deserves to be reinstated into service as afresh Badli Filler to meet the ends of justice.

14. In the result, the order of dismissal dt. 24-10-2007 marked as Ex. M-8 is set aside and respondents are directed to reinstate the petitioner into service as "Afresh Badli Filler" subject to physical fitness for the post. The petitioner is not entitled to any back wages, continuity of service or any other attendant benefits.

Typed to my dictation, corrected and pronounced by me in open Court, on this the 18th day of May, 2015.

G.V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence
Witnesses Examined

For workman:- For Management:-

-Nil-

-Nil-

EXHIBITS

For workman:—

Ex.W-1	Dt. 02-09-2010	Demand notice
Ex.W-2	Dt. 23-01-2008	Dismissal order issued by Director (PA&W), Kothagudem
Ex.W-3	Dt. 24-10-2007	Dismissal order issued by General Manager, Srirampur area.
Ex.W-4	Dt. 20-07-1999	Office order, appointment order x. copy

For Management:-

Ex.M-1	Dt. 26-03-2007	Charge sheet
Ex.M-2	Dt. 03-04-2007	Explanation to charge sheet
Ex.M-3	Dt. 19-04-2007	Undertaking submitted by the petitioner after counseling regarding improvement of attendance
Ex.M-4	Dt. 06-07=2007	Enquiry notice
Ex.M-5	Dt. 18-07-2007	Record of enquiry proceedings
Ex.M-6	Dt. 19-07-2007	Enquiry report
Ex.M-7	Dt. 25-07-2007	Show cause notice
Ex.M-8	Dt. 24-10-2007	Dismissal order
Ex.M-9	Dt. 25-03-2003	Charge sheet (previous)
Ex.M-10	Dt. 22-09-2004	Letter issued to the petitioner by the respondent regarding copy of punishment reducing the SPRA (increments)

नई दिल्ली, 13 अगस्त, 2015

कांआ 1627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस्सीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय गोदावरीखन्नी के पंचाट (संदर्भ संख्या 11/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/08/2015 को प्राप्त हुआ था।

[सं एल-22013/1/2015-आईआर (सी-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 13th August, 2015

S.O. 1627.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/11/2011) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 13.08.2015.

[No. L-22013/1/2015-IR(C-II)]
RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CHAIRMAN, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
GODAVARIKHANI.****Present-** SRI G. V. KRISHNAIAH,
Chairman-cum-Presiding Officer.**Industrial Dispute No. 11 of 2011**

Monday, the 13th day of April, 2015

Between:—Buddi Srinivas, S/o Late Bheemaiah, Aged about 23 years,
Occ: ExBadli Filler, E.C. No. 2373336, RK-1A Incline,
R/o H. No. 9-273, Arunakka Nagar,
PO Srirampur, Dist. Adilabad. --Petitioner.**AND**

1. The Colliery Manager,
SCC Ltd., RK-1A Incline, PO. Mandamarri, District
Adilabad.
2. The General Manager,
SCC Ltd., Mandamarri Area, PO. Mandamarri,
District Adilabad.
3. The Chairman & Managing Director,
SCC Ltd., PO: Kothagudem, Dist. Khammam.

--Respondents.

This case coming before me for final hearing in the presence of Shri N. Kishan Rao, Advocate for the petitioner and of Sri D. Krishna Murthy, Advocate for the Respondents, and having been heard and having stood over for consideration till this day, The Tribunal Delivered the following:—

AWARD

1. This petition is filed U/Sec. 2(A)(2) of I.D. Act challenging the dismissal of the petitioner passed by the respondents praying for his reinstatement into service with continuity of service and full back wages.

2. Petitioner was dismissed from service by the respondent *vide* office order dt. 12.10.2009 after holding domestic enquiry on the following charge.

CHARGE

"For your habitual absence from duty without sufficient cause and put in only (40) Actual Musters during the year 2007".

3. Petitioner challenges his dismissal on the following grounds:—

- (a) The petitioner was appointed as Badli Filler on 20.11.2006 under dependent employment scheme.
- (b) The petitioner has undergone basic training

satisfactorily till February, 2007 and he was posted to work under the control of the 1st respondent. The respondents have engaged the petitioner for coal filling as Badli Coal Filler against the absentee vacancies of regular Coal Fillers from May 2007.

- (c) The atmosphere and water did not suit the petitioner. Due to the strenuous coal filling work in the underground mine, the petitioner suffered from severe ill health from July 2007 and not attended regularly.
- (d) The petitioner submitted his satisfactory explanation explaining the reasons for not attending coal filling underground duty regularly.
- (e) The respondents conducted a farce of enquiry and the petitioner participated in the enquiry. Domestic enquiry was not conducted fairly and properly. The findings of the enquiry officer are highly perverse and biased.
- (f) Punishment of dismissal from service is extremely harsh, highly excessive and shockingly disproportionate.

Hence, he prays to allow the petition.

4. In response to this challenge, respondents filed counter justifying the dismissal of the petitioner. The respondents company being mining industry is a Central Government subject and the petitioner ought to have approached the CGIT, Hyderabad. This petition is not maintainable before this Court and is liable to be dismissed.

The petitioner being a chronic absentee from the date of appointment itself had put in only 40 musters in the year 2007. Therefore the petitioner was charge sheeted under clause 25.25 of company's standing orders. After considering the documentary evidence and other evidence on record, the enquiry officer submitted his unbiased report holding that the petitioner is guilty of misconduct under company standing orders. The petitioner was issued show cause notice.

5. The respondents' company after considering the past record of the petitioner and on findings that there were no extenuating circumstances for taking a lenient view was constrained to dismiss the petitioner from service. The respondents company conducted the enquiry proceedings duly in accordance to the principles of natural justice and law giving full opportunity to the petitioner. Therefore, the respondents pray to dismiss the petition without granting any relief to the petitioner.

6. Counsel for the petitioner filed Memo U/Sec. 11-A of ID Act, stating that he is not challenging the validity of domestic enquiry conducted by the respondents and praying this Tribunal to decide the quantum of relief on

the basis of the material available on record.

7. Respondents filed written arguments.

8. During the course of hearing, Ex.M-1 to Ex. M-9 are marked on behalf of the respondents.

9. Heard both sides. Perused the material papers on record.

10. On consideration of respective contentions of the parties the following points required to be determined:-

1. "Whether this Tribunal has got jurisdiction?"
2. "Whether the punishment of dismissal of the petitioner is Justified and proportionate?"

11. Point No: 1

As per the Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India, this Court has got jurisdiction to entertain the dispute raised by the petitioner. Hence, the point is accordingly answered in favour of the petitioner.

12. Point No: 2

The petitioner did not give any reply to the charges leveled against him. As per the charge sheet marked as Ex. M-1, he was absent for 260 days during the year 2007. As per the enquiry statement of the petitioner at page No.8, under Ex.M-3 the petitioner absented to duties due to personal problems. He assured that he will be more careful and will not remain absent without prior sanction of leave in future.

13. In a decision reported in Division Bench Judgment of Gujarat High Court reported in 1982 Lab IC 1031 between: R.M. Parmar VRS., Gujarat Electricity Board, the following guide lines were laid down in the matter of inflicting punishment of discharge and dismissal:—

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.
2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make to wards an erring or misguided child.
3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so

perfect that they would never commit any fault.

4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely, one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.
5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.
6. It cannot be overlooked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.
7. When the disciplinary proceedings are in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.
8. Every harsh order of removal from service creates bitterness and arouses feeling of

antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm that good to the employer as also to the society.

9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for a extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion of possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker Yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

14. It is contended by the learned counsel for the petitioner that as Badli Filler, petitioner was shown coal filling work in the absentee vacancies of regular coal fillers and he was not given work on all the days of a month during the charge sheeted period. He further contended that the petitioner joined in the year 2006 and he was not able to adjust to the strenuous underground work of coal filling duty in the short span of time. On the other hand it is argued on behalf of the learned counsel for the respondents that the petitioner was a chronic absentee, he had put-in only 40 musters in the year 2007 that even after counseling he did not attend to duties during the year 2008 and as such he was dismissed from service.

Admittedly petitioner joined in the year 2006 and he may not have been able to adjust to the strenuous work of coal filling and he had put in less than (3) years of service only and in view of the facts circumstances of the case discussed supra, I hold that it is a fit case where this Court can exercise discretion U/Ses. 11 of ID Act and the petitioner deserves to be reinstated into service as afresh Badli Filler to meet the ends of justice.

15. In the result, the order of dismissal dt. 12.10.2008 marked as Ex. M-9 is set aside and the respondents are directed to reinstate the

petitioner into service as "Afresh Badli Filler" and he shall be subjected to medical test for the post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

Typed to my dictation, corrected and pronounced by me in open Court, on this the 13th day of April, 2015.

G.V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-

-Nil-

For Management:-

-Nil-

EXHIBITS

For workman:-

-Nil-

For Management:-

Ex. M-1	Dt. 07.01.2008	Charge sheet, O/copy
Ex. M-2	Dt. 24.01.2008	Enquiry memo
Ex. M-3	Dt. 30.01.2008	Enquiry proceedings
Ex. M-4	Dt. 30.01.2008	Undertaking letter given by the petitioner after undergoing counseling
Ex. M-5	Dt. 13.02.2008	Enquiry report.
Ex. M-6	Dt. 08.03.2008	Letter issued to the petitioner by Dy. GM, RK-1A Incline asking him to attend counseling on 12.3.2008
Ex. M-7	Dt. 21.04.2008	Show cause notice
Ex. M-8	Dt. 08.08.2008	Postal Ack, to show cause notice
Ex. M-9	Dt. 12.10.2008	Dismissal order

नई दिल्ली, 13 अगस्त, 2015

का०आ० 1628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण, में, केन्द्रीय सरकार एफ०सी०आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय न० 2, नई दिल्ली के पंचाट (संदर्भ संख्या 130/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/08/2015 को प्राप्त हुआ था।

[सं० एल-22011/15/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 13th August, 2015

S.O. 1628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the (Award Ref. No.130/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 13/08/2015.

[No. L-22011/15/2013 - IR (CM-II)]
RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID. No. 130/2013

Sh. Srinath Yadav,
Labour mate and FSD/FCI Roza Depot,
FCI Mazdoor Association, U.P Region, Saray Taki.
Vs.

1. Managing Director,
Food Corporation of India, 16-20, 12 Khamba
Road, New Delhi-110001.
- 2 Area Manager,
Food Corporation of India,
287, Train Bahadur Ganj,
Shahjahanpur (PU) ,

AWARD

The Central Government in the Ministry of Labour *vide* notification No.L-22011/15/2013-IR(CM-II)] dated 10.12.2013 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether the demand of FCI Mazdoor Association UP region through his representative Shri Srinath Yadav dated 30.08.2013 against the Management of Area Manager, FCI, Shahjahanpur (UP) and MD, FCI HQ, New Delhi for regularization of services 453 Direct Payment System (DPS) workers (as per the list enclosed) in FCI Roza Depot, Shahjahanpur (UP), is legal and justified? It not to what relief the said workers are entitled to and from which date?

On 30.12.2013 reference was received in this tribunal. Which was register as I.D No. 130/2013 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants filed claim statement on 23.01.2014. Through it workmen stated that

on the basis order of Secretary, Hon'ble High Court, Hon'ble Supreme Court as well as circular 8.12.2011 issued by department that labours of 11 notified deposed of FCI which having no documents. In these circumstances aforesaid 453 workmen be treated engaged workmen in DPS system and provided them benefits of Notification dated 23.04.2010 issued by Govt. of India. They also prayed, they be regularized so that they may not face full long struggle for their survival.

Against Statement of Claim Management filed Written Statement on 20.03.2014 Wherein management prayed as follows:—

Clause of the claim are wrong, false and hence denied in view of the FCI order No. IR-30 (40)/2011/NZ/1965 dated 13.09.2011. It has been decided to induct workers at FSD Roza on NWBP basis.

To that effect induction process based on NWNP is on progress. There are no direction as regards the induction of Labour on DPS System basis.

In view of the submissions herein above made it is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to dismiss the claim of the claimants with exemplary cost being devoid of any merits, in the interest of justice.

Any other relief which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case may also be granted in favour of the O.P. and against the claimants.

In reply to written statement workmen filed rejoinder on 02.05.14. Through which they reaffirmed the contents of their claim statement.

On the basis of pleadings following issues have been framed by me on 27.05.2014.

1. Whether the demand of FCI Mazdoor Association UP region through his representative Shri Srinath Yadav dated 30.08.2013 against the Management of Area Manager, FCI, Shahjahanpur (UP) and MD, FCI HQ, New Delhi for regularization of services of 453 Direct Payment System (DPS) workers (as per the list enclosed) in FCI Roza Depot, Shahjahanpur (U.P.), is legal and justified?

2. To what relief the workman is entitled?

Workmen in support of his case filed his affidavit on 29.5.2014.

Workman tendered his affidavit on 20.6.2014. His statement of tendering of affidavit is as follows:—

I tender in evidence my affidavit at point 'A'. I rely upon my documents Ex. WW1/1 to Ex. WW1/9.

Workman was partly cross-examined on 30.07.2014 and his part Cross-examination is as follows:—

Original documents are with me of which Photostats copies has been filed in my evidence.

Documents WW1/4 is photocopy of a certified copy.

No I-card after 1994 have been filed by me nor with me.

It is incorrect to suggest that documents filed by me in the evidence are forged and fabricated.

It is correct that after notification dated 23.4.2010 by Govt. of India Contract Labour System has been abolished by FCI etc.

It is wrong to suggest that I am not authorized by the other workers not authorized by the other workers to depose on their behalf.

It is correct that FCI has issued notification/circular dated 27.10.2011 there by providing broad guidelines for regulating for regulating the service condition of 'No Work No Pay' system workers.

Vol. stated such notification is not within my knowledge.

Workman was further cross-examined on 2.9.2014 and his further cross-examined as follows:—

Original documents copy of which annexed to affidavit are not with me today. These were brought on last date and the same are exhibited as WW1/4.

The exhibit WW1/4 was certified by AGM, FCI Roza, Shahjahanpur U.P. on 16.12.1994 and by Regional Labour Commissioner, Lucknow 22.11.2006.

It is incorrect to suggest that Ex. WW1/4 is a false, forged and fabricated documents. It is correct that all the I card filed by me alongwith my affidavit are of the date 16.12.1994 and it is further correct to suggest that the list Ex. WW1/4 was also verified by the AGM of FCI on 16.12.1994.

It is wrong to suggest that Ex. WW1/4 is not verified by AGM, FCI.

I do not remember the exact name of AGM who was posted with FCI Roza at the relevant period that is 1994 but his name might be Khandwa.

It is incorrect to suggest that there is no direction from any forum or court regarding the claimant in the present matter absorption under DPS system.

It is incorrect to suggest that aforesaid scheme was not available to workman in management situated at Roza, Dist. Shahjahanpur.

I have worked with the FSD ROZA Depot for the past three years preceding to notification dated 23.4.2010.

I cannot produce any paper to show that I worked in FSD Roza Depot after 1994 to till date.

It is wrong that I have never worked with the management at FSD Roza Depot.

It is correct that system of 'No Work and No Pay' was applied by management but I challenged that system on Hon'ble High Court; High Court directed to CLC to decide it copy of aforesaid order is on record Ex. WW1/16.

It is wrong to suggest that there is no stay upon the 'No Work No Pay' system of the management.

It is correct that there is no counter signature of the contractor on identity cards filed by me in evidence.

It is also correct that other particulars of I-card are also unfilled.

It is incorrect to suggest that prior to notification dated 23.04.2010 there were only 136 workers with FCI Roza Depot.

It is correct that my name as well as name of other workmen does not find place in mustrol. It is wrong to suggest that at no point of time in FSD Roza Depot only 225 workers worked at a time and not beyond 225 workers.

It is also wrong to suggest that as per the guidelines of RLC Dehradun only 225 workers can be employed by the FCI. It is correct that Ex. WW1/1 is not signed by all other claimants in the present matter.

It is wrong to suggest that I am not authorized to file, institute the present claim before this Hon'ble Court.

It is wrong to suggest that I have filed the present claim on the basis of false, forged & fabricated documents.

It is wrong to suggest that I have filed the present claim in order to harass the management.

It is wrong to suggest that the present claim has not been properly espoused in any meeting of the competent Union. It is wrong to suggest that the union is not at all an authorized union to file present claim. It is wrong to suggest that there exist no relationship of employer and employee between the parties. It is incorrect to suggest that I have no locus standi to file this present case. It is wrong to suggest that I am deposing falsely. Cross of WW1 concluded and I fixed 9.10.14 for remaining evidence of workmen on 9.10.2014. Workmen evidence has been closed. Hence, I fixed 24.11.14 for management evidence.

Management in support of his case filed affidavit of MW1 Sh. Prabhat Chandra.

Management witness Sh. Prabhat Chandra was tendered his affidavit on 30.1.2015 and he was partly cross-examined on same day.

His statement of tendering of affidavit and part cross-examination are as follows:—

I tender my affidavit in evidence which is Exh. MW1/A. Which bears my Sig. At point A&B. I reply on the documents which are Exh. MW1/1 to MW1/3.

XXXXXXX:—Sh. G.K. Mishra, Lt. A/R for the claimants/workmen.

Circular dated 12.08.2011 is circular contents of it are conditionally accepted. His cross was continued for 6.4.2015.

On 6.4.2015 MW 1 remain present for Cross-examination but he was not Cross-examined by Lt. A/R for the workmen. Hence his Cross-Examination is marked nil.

Thereafter Lt. A/R for the management on the instruction of management closed the management evidence.

After which I fixed 1.5.2015 for arguments.

On 1.5.2015 workman filed written arguments. Wherein he mentioned as follows:—

1. Indian Food Corporation Head Quarter, New Delhi on 5.12.1994 issued circular No. IR(L)/4(15)/94. Through, which Indian Food Corporation of Management and union compromise to place on condition that Labour mate in Roza Depot took work. Through labours on D.P.S. service. Sh. Hari Lal Shankar (Asst. Manager certified. List of 453 labours and departmental Identity Card were issued on 16.12.1994 Division Labour Commissioner (K), Lucknow on 22.11.2006 also certified the aforesaid list of 453 workmen which has been filed in this Tribunal.

2. Govt. of India through, its notification dated 23.06.2010 imposed full ban of 11 depot of U.P. But Roza Depot violated the provisions of Notification as department of Roza Depot on 11.05.2010 issued tender to Sh. Vikas Aggarwal who used to took work from workman then workman filed writ-petition No. L-19208/2012 in Hon'ble High Court of Allahabad. High Court of Allahabad directed Asstt. Labour Commissioner (Central) Dehradun, to decided within 8 weeks to day-to-day basis to ensure that provisions of Notification which being followed.

3. Asstt. Labour Commissioner, Dehradun, referred to Central Government on the ground that he has no jurisdiction to implement DPS system.

4. That FCI, Mazdoor FCI, Association U.P. region filed Writ-Petition No. 59218/2011, Hon'ble High Court direct to Chief Labour Commissioner (Central) N.D. to decided the real workmen within 4 months.

5. Through, letter of Chief Labour Commissioner (Central) N.D. management of FCI took work from 453 Labour continuously. Through, Gazette Notification dated 3.9.2012 condition of no work no payment was imposed on which workmen did not agree and challenged the notification of Hon'ble High Court through Writ-Petition No. 12926/2012. In this Writ-Petition in Hon'ble High Court of Allahabad ordered that this matter shall also be decided Chief Labour Commissioner (Central) N.D.

6. On 30.8.2013 workmen moved an application before Divisional Labour Commissioner, Dehradun on which

Divisional Labour Commissioner Dehradun, passed an order of 9.10.2013 treating be people as workmen and send copy of detailed report on 15.10.13 to Secretary, Ministry of Labour and Employment Govt. of India, New Delhi.

7. After persuing of aforesaid report Secretary, Ministry of Labour and Employment Govt. of India, ordered to P.O., Karkardooma Court, Delhi to pass an Award within 3 months.

8. Hon'ble Court on 18.2.15 express his opinion that case will be decided on the basis of factual evidence on record. Hence on 6.4.2015 evidence on behalf workmen has been closed. Moreover whatever questions to be put to management witnesses on behalf of workmen which are already on record.

Prayer

It is therefore prayed that on the basis on record already filed by member of F.C.I Mazdoor Association, U.P. Reginal Mohalla, Saraitaki, Post Jhunsu, Janpad, Allahabad, be treated workmen of Roza Depot, Shahajahanpur, U.P. are actual workmen and award be passed in their favour. So, that they may get benefit of notification dated 23.4.2010 of Govt. of Workman and they may get their salary etc. from due date. **Management in support of his case filed written arguments. Wherein management mentioned as follows:—**

- (a) That the Petitioner has filed the present claim in respect of 453 labour against the Respondent thereby stating that he is the authorized representative of all the claimants as mentioned in the annexure attached with the petition. He has further stated in the claim that all the 453 workers were working with the Respondent and *vide* notification dated the 23.04.2010 the contract Labour System has been abolished by the FCI. Hence requested this Hon'ble Court to decide under DPS system all the 453 workers as worker of FCI and grant them all the benefits of FCI. Further requested to regularize them as workers of FCI.
- (b) That the notice of the present case were duly served upon the Respondents and it has duly filed its Written Statement/Reply to the claim of the claimants thereby taking various preliminary objections in the written statement and further requested the court to reject the claim of the claimants with exemplary costs devoid of any merits.
- (c) That rejoinder to the written statement/reply has been duly filed by the claimant thereby denying the contention as raised under the written statement/reply and reaffirmed the claim filed by claimants.

- (d) That after completion of pleadings both the parties were directed by the court to lead their respective evidence in support of their respective claim.
- (e) That in support of his case the claimant filed his own evidence by way affidavit and he was duly Cross-examined by the counsel of the respondent. However during Cross-examination he was completely shaken and he admitted the claim of the respondent entirely.
- (f) That in support of his claim and contentions the respondent produced Prabhat Chandra Singh Area Manager, Shahjahanpur, FCI as MW/1 and he duly filed his evidence by way of affidavit and he was also not at II been Cross-Examined by the counsel of Respondent despite opportunity was duly given by the court twice. Hence, the Testimony of the Respondent unrebutted and unchallenged.
- (g) That thereafter the matter was fixed for final arguments and hence the Respondent is filling the written arguments.

GROUND OF DISMISSAL OF THE CLAIM

- (a) Matter pertaining to identification of those labours who have worked at FSD Roza is subjudice under writ petition No.-34027/2013, 34408/2013, 34517/2013, 4366/2013, 4521/2013, 4513/2013, 4520/2013, 4511/2013, 4510/2013, 4514/2013, 4523/2013, 4509/2013, 4515/2013, 4519/2013, 4522/2013, 4512/2013 and 1571/2015. Besides, this same issue of identification of labour has been decided by Dy. CLC Kanpur *vide* order dated 12.05.2015 in case no.K:14(29)/2014/E.1(copy enclosed). Which is being challenged by FCI before High Court, Allahabad.
- (b) Because no documentary evidence has been filed by the claimants in support of their claim that they were working with the respondent at any point. It is pertinent to mention here that the documents as filed by the claimants are forged and fabricated documents.
- (c) Because except the Petitioner no other person/claimant has come under witness box for his cross-examination. No individual affidavit in support of the claim has ever been filed by all the claimants/workers mentioned in the list, despite the directions of tribunal. Further Srinath Yadav is not at all authorized person to depose on behalf of the 453 claimants. No authority letter on behalf of 453 claimants has been filed by the said Srinath Yadav in support of his claim. Hence, it is clear that the present claim has been filed by unauthorized person having no authority to file the present claim.
- (d) Because the claimant has miserably failed to prove that they are under employment of the Respondent at any point of time. However it is submitted that the Respondent has clearly proved that the claimant workmen had never been in the employment of the Respondent/FCI in any capacity at any post what so ever in nature. There no master and servant relationship between the Respondents and the claimants labours. When there exists no relationship of employed then the question of regularization of their services by respondents does not arise at all. Hence the claim is liable to be dismissed with heavy costs.
- (e) Because admittedly that the Respondent has clearly proved that after the issue of notification dated 23.04.2010 by the Government of India, Ministry of Labour New Delhi regarding prohibition of employment of Contractor Labour so many unions are claiming that the labour employed by the ex-contractor labour are their members and they should be regularized in the employment of Food Corporation of India various other has filled cases before the labour authorities.
- (f) Because the Respondent has clearly proved that the claim has been filed on the basis of forged and fabricated documents. The claim of the claimant is misleading and frivolous as it contains many factual error such as they have never worked as DPS labour in any of the depot in FCI Shahjahanpur nor there is any court directions for their absorption under DPS system. Hence the claim is liable to be dismissed with exemplary costs. There is no direction from any forum or court regarding the absorption of these workers under DPS. There claims as mentioned in the claim statement is bogus nad misleading. Moreover, DPS system has never been prevalent at FSD Roza.
- (g) Because the Respondent has clearly proved that the present claim is also not maintainable in view of the Notification dated 23.04.2010 which prohibits employment of contract labour. There is no direction arising from the notification dated 23.04.2010 to take the ex contractor labour in the employment of Food Corporation of India, therefore there is no right of any claimant of any type. As such the claim is liable to be dismissed with exemplary costs.
- (h) Because the Respondent has clearly proved that the claim of the claimant is also not maintainable as the claimant is having no locus standi to file the present claim and he is not at all authorized

to file the present claim. Hence the same is liable to be dismissed with heavy costs.

- (i) Because the Respondent has clearly proved that the present claim of the claimant is not maintainable as per the FCI order No-IR-30 (40)/2011/NZ/1965 dated 13/09/2011. It has been decided to induct workers at FSD ROZA on NWNP basis. To that effect a list of labour who has worked at FSD ROZA during three years preceding from the date of notification has been drawn on the basis of available records. However the name of any of the claimant is not mentioned in the said list. The copy of the list is attached herewith AS Exhibit DW 1/3 (COLLY). Even the said process is also stayed by FCI headquarters *vide* letter dated Exhibited. There are no direction as regards the induction of labour on DPS System basis. Hence the claim of the claimant is liable to be dismissed with heavy costs.
- (J) Because admittedly the witness produced by the Respondent in support of its claim was not at all been cross examined by the counsel of the claimants. Hence the Testimony of the Respondent remain un rebutted, unchallenged. Hence the defence of the Respondent has totally been accepted by the Petitioner. Hence his claim of the claimants is liable to be dismissed with heavy costs.
- (K) Because in support of its claim the claimant has not filed even a single documents for the current period the alleged documents, although the Respondent challenged the sanctity of the same, also pertains to the period of 1994 itself which itself creates the doubt regarding the sanctity of the claim of the Petitioner.
- (I) Because the claimants have admitted the list of the workers filed by the Respondent in support of its evidence.

In view of the submission hereinabove it is therefore most respectfully prayed that this Hon'ble Court may be pleased to dismiss the present claim of the claimants with exemplary cost, in the interest of justice.

Ld.A/R's for the parties have not orally argued but filed written arguments. In the light of contentions and counter contentions mentioned in written arguments. I perused the question of determination mentioned in the reference, contents of claim statement, written statement and rejoinder, issues framed by me on the basis of reference and pleadings of parties and relevant provisions of law of burden of proof of those issues as well as evidence adduced by parties to prove its case through discharging their burden of proof to prove the issue as well as other contents of written arguments. Perusal of reference dated

10.12.13 shows that questions for determination mentioned in it and sent for adjudication to this Tribunal are as follows:—

"Whether the demand of FCI Mazdoor Association UP region through his representative Shri Srinath Yadav dated 30.08.2013 against the Management of Area Manager, FCI, Shahjahanpur (UP) and MD, FCI HQ, New Delhi for regularization of services of 453 Direct Payment System (DPS) workers (as per the list enclosed) in FCI Roza Depot, Shahjahanpur (UP), is legal and justified? If not to what relief the said workers are entitled to and from which date?"

On the basis of which as well as on basis of pleading of parties following issues have been framed by me on 27.5.2014:—

1. "Whether the demand of FCI Mazdoor Association UP region through his representative Shri Srinath Yadav dated 30.08.2013 against the Management of Area Manager, FCI, Shahjahanpur (UP) and MD, FCI HQ, New Delhi for regularization of services of 453 Direct Payment System (DPS) workers (as per the list enclosed) in FCI Roza Depot, Shahjahanpur (UP), is legal and justified?

2. To what relief the workman is entitled?

According to contents of aforesaid Issues burden of proof to prove Issue No. 1 & 2 lies on workmen union. Only WW1 Shrinath Yadav, Mate/President F.C.I. Mazdoor Association, U.P. Region has been examined to prove his affidavit in evidence on behalf of claimant. Which is neither corroborated by other oral evidence, nor any documentary evidence.

Moreover, when WW1 was cross-examined by Ld. A/R for the management. He could not give rational answers to questions put to him. Which were put to him to challenge his veracity. He admitted many questions in his cross-examination. Which have already been mentioned in earlier part of award. So, his evidence is short of that evidence which is required to prove the Issue No. 1 and Issue No. 2.

Moreover, his evidence is not reliable and credible in the circumstances of the instant case. While management in rebuttal produced MW1, Sh. Prabhat Chandra, who tendered his detailed affidavit alongwith relevant documents on 30.1.2015.

It is relevant to mention here that when he was cross-examined on 30.01.2015 by Ld. A/r for workman only one question was put to him. In reply of which he stated that circular dated 12.08.2011 is circular, contents of it are conditionally accepted.

His cross-examination was continued for 6.4.2015. On 6.4.2015 MW1 Sh. Prabhat Chandra came and

remain present for cross-examination but he was not cross-examined by Ld. A/R for workmen. Hence his cross-examination has been marked nil.

So, testimony MW1 Sh. Prabhat Chandra, is uncontroverted and unrebutted which cannot be discarded. It is well know principle of law that case is decided on the basis of evidence adduced by parties to discharge their burden of proof prove to issues and not on the basis of pleadings only.

In the instant case burden of proof to prove Issue No. 1 and 2 was on workmen union who utterly failed to prove hence Issue No. 1 is liable to be decided against workmen union and if favour of management. Which is accordingly decided.

Issue No. 2 relates relief which is not required to be decided because Issue No. 1 has already been decided against workmen union.

Reference is decided against workmen union and in favour of management. Claim petition is accordingly dismissed.

Award is accordingly passed.

Dated 7/7/2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 13 अगस्त, 2015

कांआ 1629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी०एम०पी०डी०आई०एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 90/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/08/2015 को प्राप्त हुआ था।

[सं. एल-22012/396/1994-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 13th August, 2015

S.O. 1629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the (Award Ref. No.90/95) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of CMPDIL, and their workmen, received by the Central Government on 13/08/2015.

[No. L-22012/396/1994-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/90/95

General Secretary,
SKMS (AITUC) Union,
Singrauli,

PO Jayant Colliery,
Distt. Sidhi (MP)

...Workman/Union

Versus

Regional Director,
CMPDIL, RI-VI,
Singrauli, PO Jayanti Colliery,
CWS Colony,
Distt. Sidhi

...Management

AWARD

Passed on 22nd day of June, 2015

1. As per letter dated 25.5.95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/396/94-IR(C-II). The dispute under reference relates to:

“Whether the action of the Regional Director, CMPDIL RI-VI, Singrauli in superceeding Shri Seo Prakash Sharma and Shri Rameshwarlal General Mazdoor Cat-I by promoting/recategorising persons junior to them as Clerk Grade III *w.e.f.* 19.1.90 is legal and justified? To what relief these two workers are entitled to?”

2. After receiving reference, notices were issued to the parties. The award was passed by my predecessor on 17-9-2000 in favour of the workman. Said award is set aside by Hon'ble Chhattisgarh High Court, Bilaspur bench as per judgment in Writ Petition No. 1530/2006 and matter is remanded for fresh decision after hearing the parties. In pursuance of remand of matter, notices were issued to parties. The interveners Shri Gorachand Choudhary and Ghansham Kanak have been impleaded. Application for impleading Shri A.K. Mishra is rejected as claimed not related with dispute.

3. Statement of claim is separately filed by Ist party workmen at Page 4 to 5 & 6 to 7. Case of Union as per statement of claim is that Shri Rameshwarlal was member of Union and posted as General Mazdoor Category-I working in Drilling Camp, Singrouli on 8-8-87, he was working as General Mazdoor. He was entrusted job of Assistant store Keeper. As such he was performing duties of Asstt. Store Keeper. Shri Sheo Prakash Sharma joined CMPDIL on 5-10-87 as General Mazdoor Category-I. He was entrusted work of clerk. That Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary joined their services on 7-11-87 as General Mazdoor with IInd party. They were junior to above said workman. It is alleged that Shri G.C. Choudhry is son-in-law of Shri P.K. Sarkar Sr. Personnel Officer and Shri A.K. Mishra is relative of Shri R.N. Mishra, Chairman-cum-Managing Director at the time of regularization as semi clerk, Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary were shown favour ad workman was denied promotion. Above said workmen junior to him were

promoted *vide* office order dated 19-1-90. That Mr. Sharma and Rameshwarlal were possessing qualifications and eligibility for the post. The promotion was illegally and arbitrarily denied to them. The juniors Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary were re-designated as clerk Grade II without considering Ist party workmen Shri S.P. Sharma and Rameshwarlal. Both workmen and Union submitted representations but was of no avail. Injustice was caused to both of them in the matter of promotion. It is submitted that Shri S.P. Sharma and Rameshwarlal are entitled to be treated at par with 3 others as they were seniors. Rameshwarlal was regularised as per order dated 19-1-89 whereas so many juniors were regularised *w.e.f.* 5-1-89. That Shri S.P. Sharma is also denied promotion when juniors to him were promoted. He was illegally denied promotion. Union has prayed that both S.P. Sharma and Rameshwarwal be allowed promotion *w.e.f.* 19-1-90 considering their seniority.

4. Management filed Written Statement at Pages 11 to 15 opposing claim of Union. Case of IInd party management is that CMPDIL is a company registered under the Indian Companies Act having its registered office at Ranchi (Bihar) It is subsidiary of Coal India Ltd. the aim of CMPDIL is mine planning, exploration, National/International consultancy. CMPDIL carries out detailed exploration by setting camps for drilling and other related works. It is contented that as part of the functioning, CMPDIL undertook project work at Meera Nagar, PO Merta Road, Nagpur, Rajasthan. Said project was under the S & T Project for underground gasification carried during November 87 to November 88. That said project was separate establishment and temporary project. In order to execute said project, management of CMPDIL engaged casual workman for operation of project. Workman engaged for purpose of operation of said project had no claim for employment once the operation of project came to end in November 1988.

5. It is further contented that workman Rameshwarlal and Shri S.P. Sharma were engaged *vide* letter dated 7-11-87 and 25-10-87 respectively. That dispute being there is no claim of employment of workman engaged at Meera Nagar after its completion. Management was not bound to offer them employment. However decision was taken to offer employment of casual workman at Meera Nagar to those casual labours who completed 240 days continuous service. Accordingly workman was given appointment to the post of General Mazdoor Category I as per letter dated 3-10-88. In pursuance of it, workman Rameshwarlal and Shri S.P. Sharma reported to work on 7-11-88 & 18-10-88 respectively. Their services were regularised as per order dated 17-9-89. In 1988 with a view to study details of manpower, the Committee was constituted *vide* order dated 12-8-88. the Committee was constituted for re-categorisation of casuals being paid category I wages and identification of casuals engaged

against sanctioned posts and regular nature of job. Said Committee did not recommend the Ist party workmen for their regularisation on post of Clerk Grade-III. That Shri S.P. Sharma and Rameshwarlal cannot claim post of clerk Grade III as a matter of right. They were not given said post as their cases were not recommended by Screening Committee. Action of the management in not giving appointment of clerk Grade III is proper and legal.

6. IInd party contented that Shri S.P. Sharma and Rameshwarlal were engaged as casual project. Said project came to end in November 1988. On completion of said project, the employees temporarily engaged were terminated. Management have engaged workman as clerk. It is submitted that Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary were regularised as Category I mazdoor from 7-11-87. Shri S.P. Sharma reported on duty. It is alleged that Shri G.S. Kanak and G.C. Choudhary are relative of the officers of the management is immaterial. The allegations are made with ulterior motive. It is denied that they were favoured by management for regularisation of the post of clerk. It is submitted that Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary were senior to workman. their cases were not recommended by the Screening Committee. That Shri S.P. Sharma and Rameshwarlal are not entitled for promotion/re-categorisation on the post of Clerk Grade III from 19-1-90. It is reiterated that considering seniority of Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary and recommendation by Screening Committee, they were allowed categorization to clerk Grade III from 19-1-90 till the claim of the workman cannot be accepted.

7. Ist party Union submitted rejoinder at Pages 16 to 18 reiterating its contentions in statement of claim. That workman Rameshwarlal and Shri S.P. Sharma were absorbed in CMPDIL Singrauli. They had join duty on 8-8-87, 8-10-87. The fact remains that they were regularised in service from the date of joining service at Meera Nagar Project from 8-8-87, 5-10-87. Their services were treated as continued from the above dates. Management deliberately suppressed said facts in his statement of claim. The contentions of management regarding Screening Committee, Union submits no Screening Committee was constituted. That so called committee arbitrarily, malafidely without fixing any criteria for re-categorisation, Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary were regularised from 7-11-87. They do not possess special qualifications. They were junior to Shri Rameshwarlal and Shri S.P. Sharma and were fully qualified and eligible being senior to those employees. There are no reason for not recommending the names of Ist party workman for categorization to the post of Clerk Grade III. That Shri Rameshwarlal and Shri S.P. Sharma were regularised from the date they joined at Meera Nagar. It is denied that they were junior to Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary. The contentions of management in that regard are false.

8. After adducing evidence by parties, witnesses of both the sides were cross-examined, my predecessor passed award dated 17-7-2000. The promotion order of Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary *w.e.f.* 19-1-90 was set-aside. Management was directed to consider case of superceeded workman Shri S.P. Sharma and Rameshwarlal for their re-categorisation as Clerk Grade-III. After remand of the matter, as per judgment in W.P. No. 1530/2006 dated 6-3-13, the intervener Shri Gorachand Choudhary and Ghansham Kanak were impleaded as party. The application for impleading Shri A.K. Mishra as party was rejected as per order dated 3-2-2014 considering his contentions that he had not challenged the award passed by this Tribunal, he is not concerned with the relief sought in the dispute. The interveners Gorachand Choudhary and Ghansham Kanak submitted their Written Statement on 16-12-13 and 26-12-13. Though separate Written Statement is filed by interveners, their contentions are identical.

9. Both Gorachand Choudhary and Ghamsham Tiwari claims to be senior to workman. That they were appointed as per order dated 7-11-87. Their services were regularised as per order dated 5-1-89 *w.e.f.* 7-11-87. In 1984, with a view to study details of manpower, the Committee was constituted as per order dated 12-8-88 for re-categorisation of casuals being paid on wages and identification of casual engaged against sanctioned post and regular nature of job. The Screening Committee had not recommended workman Shri S.P. Sharma and Rameshwarlal. On recommendation of Screening committee and interview held by the committee, both interveners were found fit for promotion as per the criteria framed by the Committee. The intervener No. 1, 2 were promoted as Clerk Grade III from 19-1-90. Shri A.K. Mishra was also promoted alongwith them. That both interveners were allowed upgradation as clerk Grade II, LDC. They were also given National seniority from 22-12-90. Vide order dated 26-8-99, management issued circular considering their service for more than 8 years, they were upgraded to the next higher grade *w.e.f.* 1-1-99. They were promoted to the post of LDC/SLU as per said order. That interveners have faced departmental exam, typing test and interview for their promotion that after 23 years of their service, their promotions were cancelled by the management as per award dated 17-7-2000 passed by this Tribunal. Both interveners reiterates that workman were not recommended by Screening Committee. Both workmen were not senior to them. The management regularised their services vide order dated 19-9-89 considering their appointments dated 8-8-87 and 5-10-87 was mistake of the management. That Shri S.P. Sharma and Rameshwarlal were absorbed subsequently after termination of their services. It is submitted that their promotion was not challenged by Union as per the terms of reference. The promotion of both the interveners was legal. That Shri

Shiv Prasad Sharma and Rameshwarlal claim promotion on the ground of parity. The point of eligibility and qualification of the workman is matter of record. The interveners were promoted after adopting proper process of promotion conducting interveners following the guidelines framed by the management. the interveners submits that Shri Rameshwarlal died. The claim of workman is for promotion, it is for management to grant promotion to the workman. The cancellation of their promotion is not legal.

10. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------|
| (i) Whether the action of the Regional Director, CMPDIL RI-VI, Singrauli in superceeding Shri Seo Prakash Sharma and Shri Rameshwarlal General Mazdoor Cat-I by promoting persons junior to them as clerk Grade-III <i>w.e.f.</i> 19-1-90 is legal and justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

11. Before dealing with Point No. 1, it would be appropriate to deal with the argument advanced by the parties. That award dated 17-7-00 passed by this Tribunal was challenged in Writ Petition No. 1530/2006. Said Writ Petition was dismissed in SLP 4405/04. Review Petition No. 2029/2004 whether the award passed by the Tribunal has become final. While deciding Writ petition No. 6362/00, the facts were suppressed about those judgments and the order of remand passed in Writ Petition No. 1530/06 is from per-incurium and matter cannot be decided as per directions in the order of remand.

12. Learned counsel for management Shri A.K. Shashi as well as Shri D.P. Rao for Ist party workman emphasized that in view of dismissal of writ petition No. 1530/06 by Chhattisgarh High Court and SLP No. 4405/04 by Apex Court, the order of remand passed in Writ petition 6362/00 suppressing the material facts from said court is not legal. Without going into detailed reasons in the dismissal of Writ petition 1530/06 by Chhattisgarh High Court and SLP No. 4405/04, it is to be noted that interveners were issued showcause notice for cancellation of their promotions in view of award dated 17-7-00. The interveners were not party to this reference. Their promotions were cancelled after issuing showcause notice. The copies of showcause notice are produced by Shri A.K. Shashi in bunch submitted with his notes of

argument. The terms of reference was relating to the superseding Ist party workmen Shri S.P. Sharma and Rameshwarlal. The legality of the promotions of the interveners was not included in the terms of reference. However as per award dated 17-7-00, the promotions of interveners and Shri A.K. Mishra were cancelled and directions were issued to management to consider the case to superseded workman Shri S.P. Sharma and Shri Rameshwarlal for recategorisation. In Writ petition No. 1530/06 & SLP No. 4405/04, the interveners and Shri A.K. Mishra were not parties. The Writ petition 1530/06 was filed by Shri Gorachand Choudhary feeling aggrieved by cancellation of promotion. In Writ Petition filed before Chhattisgarh High Court and SLP, the cancellation of promotion of interveners and Shri A.K. Mishra was involved for consideration. While remanding the matters as per judgment in Writ petition 1530/06, his Lordship dealing with impugned award dated 17-7-00, promotion of petitioner Gorachand dated 19-1-90 was cancelled without notice to the interveners. Therefore the matter was remanded. I do not find any substance in the argument advanced by learned counsel for Ist party and management that the order of remand as per judgment dated 6-3-13 suffers from suppression of material facts as the grievance of cancellation of promotion of Shri Gorachand Choudhary, A.K. Mishra and Ghansham Kanak was not under consideration in the Writ Petition 1530/06 and SLP No. 4405/04. For above reasons, I am bound to follow the directions issued by his Lordship while remanding back the matter as per judgment in Writ petition 1530/06.

13. Turning to the claim of workman, affidavit of evidence were filed by Shri S.P., Sharma and Rameshwarlal contending that they were senior to Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary, that Shri S.P. Sharma was regularised from 5-10-87 from the date of joining at Meeranagar project. He was regularised as per order dated 19-9-89. He was entrusted with clerical work. He possessed qualification for holding the post of semi clerk, Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary joined service on 7-11-87 as Category Mazdoor General Mazdoor. His services were regularised as General Mazdoor as per order dated 8-1-89. At the time of regularization of Category-I General Mazdoor with a view to extend favour to Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary. He was denied regularization. Shri S.P. Sharma in his cross-examination says CMPDIL is carrying work related to exploration of coal deposits. In the year 87-88, he was working as casual labour at Meera Nagar camp. Thereafter he was working at Singrauli, he produced appointment letter at Exhibit M-1, the appointment letter at Singrauli is produced at Exhibit M-3. M-4 is joining report. As per order Exhibit M-6, he was regularised. Management has constituted committee for categorization of casual workers. The committee was consisting of 3 members. Shri S.P. Sharma was not called for interview, he had complained about it. The committee

members were not relative of Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary. he denied that he was regularised form 18-8-88. He has not received order for working as clerk. he denied that Shri A.K. Mishra, G.S., Kanak and G.C. Choudhary were senior to him.

14. Cross-examination of Shri Choudhary shows that two member of Screening committee have retired. Meeting of the committee was held on 17-11-88. Only employees working regularly in camp were called for interview. Shri Choudhary witness of the management in his cross-examination says no policy was framed by the management in the matter of regularization of casual employees. Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary who were regularised were permanent employees in the camp. Cross-examination of Shri Rameshwarlal is identical to the cross-examination of Shri S.P. Sharma. His evidence is about regularization of his service from 5-10-87 is not shattered. The documents Exhibit W-7 order dated 3-10-88 shows on completion of 240 days service at Meera Nagar camp were absorbed. They were directed to join duty within 10 days.

15. The evidence of management's witness Shri R.L. Pandey supporting contention of management, states that Rameshwarlal and Shri S.P. Sharma were engaged in the Meera camp were regularised. His evidence in cross-examination shows he was working since July 99 at Ranchi Hqr. As per record, both workman were working at Meera Nagar Project from 8-8-87, 5-10-87. The witness admitted Exhibit W-7, W-11. Management has not produced policy related to re-categorisation. The witness was unable to tell that the employees were interviewed by the Screening Committee for re-categorisation. Witness was unable to tell that workman were not interviewed by the Screening Committee. That Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary were allowed clerk Grade III from 19-1-90.

16. The evidence of interveners is filed by affidavit contending that Shri Ghansham Kanak was appointed as per order dated 7-11-87. Shri Corachand Choudhary was appointed from 7-11-87. Shri A.K. Mishra has been elevated as Welfare Officer and he has not participated in present reference therefore the legality of his promotion need not be decided in the present matter.

17. Shri G.S. Kanak in his cross-examination says after award was passed in 17-7-2000, management did not implemented. He admits he and G.S. Choudhary were called before selection committee after the award. He was allowed post of Clerk Grade III. Management allowed benefit of SLU. He had received knowledge from management that the award passed by this Tribunal was challenged before Hon'ble High Court and SLP filed in Apex Court. Shri Gorachand Choudhary in his cross-examination says that award passed by this tribunal was challenged in High Court Writ Petition and filling SLP in

Apex Court. He claims ignorance about the same. He is allowed benefit of Clerk Grade III from May 2001. Shri Ghansham Kanak was also given said benefit from May 2001. The evidence of both the interveners in almost identical. The document exhibit M-1, M-4, 5 produced by management relates to recruitment of Welfare office has no bearing to controversy between parties. As stated earlier, notice Exhibit M-2 was issued by management on 12-3-01. There is clear reference that as per award passed by this Tribunal, why their promotions should not be cancelled.

18. The evidence of Dharendra Kumar Sinha on affidavit supporting contentions of management is on the point Shri S.P. Sharma filed Writ petition No. 6634/07. That intervener Shri G.S. Kanak filed petition No. 5800/03 before Jharkhand High Court was dismissed withdrawn. From evidence of the management's witness, documents Exhibit M-1 to M-6 are admitted in evidence. In his cross-examination, management's witness says he has not given evidence in the matter prior to the award was passed. The representation submitted by Intervener Nos. 1, 2 were replied. Management's witness in his cross-examination says Shri A.K. Mishra was working as Category-I General Mazdoor prior to 19-1-90. The evidence discussed above is clear that Ist party workmen were working from 8-8-87, 5-10-87. Their services were regularised from above dates as per order dated 9-9-89 is not shattered. Both the workmen were not called for interview by Screening Committee. The services of interveners were regularised as per order dated 5-1-89 Exhibit M-9 *w.e.f.* 17-11-87. Thus the interveners were quite junior to workman, they were not called for interview by Screening Committee. As per evidence of management's witness, the management had not followed policy in the matter of categorization of casual workers. What policy was considered by screening committee at the time of categorization of casual employees is not produced. It is clear that both workmen Shri S.P. Sharma and Rameshwarlal is discriminated. Therefore I record my finding on Point No. 1 in Negative.

19. Point No. 2-in view of my finding in Point No. 1, Ist party workmen Shri S.P. Sharma and Rameshwarlal were discriminated. The rule of parity should have been followed. However in present case, my predecessor passed the award setting aside promotions of Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary is beyond the terms of reference. For sake of clarity, I reproduce the terms of reference below—

"Whether the action of the Regional Director, CMPDIL RI-VI, Singrauli in superseding Shri Seo Prakash Sharma and Shri Rameshwarlal General Mazdoor Cat-I by promoting/recategorising persons junior to them as clerk Grade III *w.e.f.* 19-1-90 is legal and justified?

The promotion of Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary is not included in the terms of reference.

20. Learned counsel for workman Shri D.P. Rao pointed out my attention to the documents Exhibit W-1 cancelling promotions of Shri G.S. Kanak and G.C. Choudhary as per

order dated 25-5-01. The show cause notice was given. Document Exhibit W-2 shows that Shri A.K. Mishra, G.S. Kanak and G.C. Choudhary were allowed post of clerk Grade III vide order dated 5-12-01. Vide Exhibit W-3 workmen were informed by management that there is no direction in award passed by this Tribunal to promote them from 1990 to the post of clerk Grade III. By cancellation of the promotions of interveners and Shri A.K. Mishra, their subsequent promotions to the higher post were also automatically cancelled.

21. Learned counsel for workman Shri D.P. Rao in his notes of arguments emphasized that the Tribunal cannot extend scope of reference. Reliance is placed on ratio held in

Case of Delhi Cloth and General Mills Company Ltd. and their workmen and others reported in 1967-1-LLJ-423. Their Lordship of the Apex Court dealing with scope and ambit of dispute held that Tribunal cannot widen the scope of the enquiry beyond the terms of reference.

Ratio held in case of Pottery Mazdoor Panchayat versus the Perfect Pottery Co. Ltd. and another reported in 1979 LAB.I.C.827, Mukand Ltd *versus* Mukand Staff and Officers Association reported in 2004(2) JLJR SC-311 supports argument advanced by Shri D.P. Rao on behalf of workman. Shri D.P. Rao further submits that the SLP dismissed neither amount to *res judicata*. Above argument are supported from ratio held in case of UP Road Transport Corporation *versus* Omaditya Verma reported in 2005 AIR SCW 2097.

In case of Tridip Kumar Dingal and others *versus* State of West Bengal and others reported in 2009(1) SCC 768. Their Lordship held the selection of those candidates would not be set aside without affording them opportunity of hearing.

In present case, promotion of Shri A.K. Mishra and interveners was set-aside without notice to them. The evidence adduced by parties clearly shows that services of workman including deceased Rameshwarlal were regularised prior to the interveners, they were not called for interview. Management has not framed any policy in the matter of categorization of casual labours. The award dated 17-7-00 was passed by my predecessor beyond the terms of reference. The said award was confirmed by Hon'ble High Court in Writ petition 1530/06 and SLP. was dismissed. However I shall mention here that cancellation of promotion of the interveners and Shri A.K. Mishra was not involved for consideration.

22. Shri D.P. Rao also relies on ratio held in

Case of Trimurthulu K. and others *versus* M.V.N. Murthy and others reported in 1998-II-LLJ363. Their Lordship held casual employees can claim benefit of seniority only from the date on which they were appointed on regular basis and casual service would not be counted towards seniority.

As the services of workman were regularised earlier to the services of intervener and Shri A.K. Mishra, the ratio does not advance the claim of intervener and their services were subsequently regularised.

23. Shri D.P. Rao, Learned counsel for workman also placed reliance on ration held in

Case of V.K. Dubey and others versus union of India and Others reported in 1997-II-LL-J-997, in case of C.A. Hames, Carpenter Grade I, Dry Dock, Cochin Port Trust and Another *versus* Assistant Secretary, Cochin Port Trust and Others reported in 1996-II LLJ 839, in case of Joyachan M. Sebastian and Director General and others reported in 1997-LL-J-677, in case of Bir Singh Kadian and state of Haryana reported in 1996-II-LLJ-172.

The ratio held in all those cases has no direct bearing to the controversy between parties in view of services of both the workmen were regularised earlier to the interveners and Shri A.K. Mishra. Considering ratio held in 2004(2) JLJR SC-311, 1979 LAB.I.C.827, the Triunal cannot decide the matter beyond the terms of reference. The legality of the promotions of both the interveners and Shri A.K. Mishra not included in the terms of reference cannot be decided. The evidence adduced by both workmen are clear that their services were regularised earlier to both interveners and Shri A.K. Mishra. Both workmen were not called for interview before Screening Committee. They were denied promotion. Employees junior to him both intervener and Shri A.K. Mishra were promoted. Management had not declared policy in the matter of categorization of casual employees. In absence of such policy, the screening Committee has recommended both interveners and Shri A.K. Mishra cannot be said legal. To be precise, both the workmen were discriminated by the management, there were denied promotion of clerk Grade III which was allowed to the junior employees, interveners and Shri A.K. Mishra. Following principles of natural justice, the workmen deserves to be given benefit which was allowed to the employees junior to them. The 1st party are entitled deemed promotion from 19-1-90. Accordingly I answer Issue No.2.

24. In the result, award is passed as under:-

- (1) The action of the Regional Director, CMPDIL RI-VI, Singrauli in superceeding Shri Seo Prakash Sharma and Shri Rameshwarlal General Mazdoor Cat-I by promoting/recategorising persons junior to them as clerk Grade III *w.e.f.* 19-1-90 is not legal and proper.
- (2) Innd party management is directed to give benefit of deemed promotion to workmen Shri S.P. Sharma and Rameshwarlal from 19-1-90, the date promotions as Clerk Grade III were given to the junior employees Shri A.K. Mishra, G.S.Kanak and G.C. Choudhary.

Pay of both workmen be fixed and difference of amount be paid from the date of reference *i.e.* 25-5-95 within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

25. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2015

कांआ 1630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कालस्वरर मिल्स, सिवगन्डे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 117/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/08/2015 को प्राप्त हुआ था।

[सं एल-42012/142/2014-आई आर (डी यू)]

पी॰के॰ वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 14th August, 2015

S.O. 1630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. 117/2014) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of the M/s Kaleeswarar Mills, Sivagangai and their workman, which was received by the Central Government on 13/08/2015.

[No. L-42012/142/2014-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 29th July, 2015

PRESENT: K.P. RASANNA KUMARI

Presiding Officer

Industrial Dispute No. 117/2014

(in the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Kalleswarar Mills and their workman)

BETWEEN

Sri K. Mayamuthu : 1st Party/Petitioner

AND

The General Manager : 2nd Party/Respondent
M/s. Kaleeswarar Mills

"B" Unit

P.O. Bag No. 1, Kalayarkovil

Sivagangai District-630551

Appearance:

For the 1st Party/Petitioner : M/s. S. Ravi & T. Ramkumar, Advocates

For the 2nd Party/Respondent : M/s. T.S. Gopalan & Co. Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-42012/142/2014-IR (DU) dated 17.11.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the dismissal of service of Sri K. Mayamuthu *w.e.f.* 21.07.2012 by the management of Kaleeswarar Mills "B" Unit, Kalayarkovil is legal and justified? If not, to what relief the petitioner is entitled to?"

2. On receipt of the industrial Dispute this Tribunal has numbered it as ID 117/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and filed claim and counter statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the service of the Respondent on 01.06.1986. He had been continuously working without any blemish till his dismissal from service on 21.07.2012. While in service, on 22.06.2011, a Show Cause Notice was issued to the petitioner alleging that the petitioner had unauthorizedly absented from work from 02.06.2011. The allegations in the Show Cause Notice were vague and did not contain any details to enable the petitioner to ascertain the allegations made against him and to submit his explanation effectively. However, on 06.07.2011 the petitioner had submitted explanation denying the allegations. Without accepting the explanation the Management initiated domestic enquiry and appointed an Enquiry Officer. The Enquiry Officer had conducted enquiry fully in favour of the Respondent Management. The petitioner was not given any opportunity to defend his case in accordance with the principles of natural justice. The Management had not produced any documentary or oral evidence to substantiate the allegations. The Enquiry Officer has given a finding to the effect that the charge against the petitioner is proved. Based on the enquiry report the Disciplinary Authority imposed punished of dismissal from service on the petitioner. The authority did not consider the explanation submitted by the petitioner before issuing order of dismissal of the petitioner from service on 19.07.2012. The dispute is raised accordingly, The order of dismissal is without any justification. An award may be passed

holding that the order of dismissal issued to the petitioner is unjustified and also directing the Respondent to reinstate the petitioner in service with back wages, continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

Habitual absence without leave is one of the acts of misconduct enuerated in the Standing Orders of the Respondent. Habitual absence on the part of a skilled workman like the petitioner would cause serious dislocation of work or even loss of production. The petitioner was a chronic absentee and had been absent without leave on several days in the years from 2005 to 2010. Even in 2011 disciplinary action was initiated against him for unauthorized absence. From 02.06.2011 the petitioner continuously remained absent without leave. So Show Cause Notice was issued to him on 29.06.2011 calling upon him to show cause why disciplinary action should not be initiated against him. The explanation given by the petitioner was that he was continuously ill, that he was not able to physically carry out the work load fixed by the settlement, that he was incurring heavy expenses towards medical treatment and that he was not in a position to continue in employment and he should be considered for voluntary retirement. Thus his explanation itself justifies the action of the Respondent which ultimately resulted in his removal from service *w.e.f.* 21.07.2012. The petitioner was continuously absent without leave from 02.06.2011 to 21.07.2012. If the petitioner had shown any willingness to resume work the Respondent would have considered him for punishment short of termination of employment. The petitioner is not entitled to any relief.

5. In the rejoinder filed, the petitioner has reiterated his case in the Claim Statement and also denied the allegations made in the Counter Statement.

6. Even though in the Claim Statement the petitioner has contended that the domestic enquiry was conducted in violation of principles of natural justice, the petitioner had not insisted to have this decided as a Preliminary Issue. That such a contention was raised was not brought to the notice of the Tribunal also. It is accordingly documents were marked and the matter had been argued in the absence of any oral evidence on either side. However, on going through the written submission given by the counsel for the petitioner on behalf of the petitioner, I find that the issue is raised. It is stated in the written submission that the enquiry was not conducted in fair and proper manner. However, on going through the enquiry proceedings. I find that the petitioner has participated in the enquiry proceedings. The Management had produced the muster roll and two other documents before the Enquiry Officer and these were marked. However, the issue seems to have been decided largely based on the admission of the petitioner that he was not well and his wife was also having

illness during the period in question and this was the reason for his absence. The Enquiry Officer has assumed it to be the admission on the part of the petitioner regarding the charge of unauthorized absence and has entered a finding mainly on this basis. The petitioner did not propose to lead evidence on his side. It is accordingly the enquiry was concluded. On going through the enquiry proceedings it cannot be stated that it is a case where the enquiry was not conducted in a fair and proper manner. Probably there must have been lapses on the part of the Enquiry Officer in the sense that it was not conducted in a manner which is supposed to be done. However, the fact is that the petitioner had sufficient opportunity to put forth his case before the Enquiry Officer. So in any case enquiry could not be said to be unfair, improper and against principles of natural justice.

7. The evidence in the case consists of Ext.W1 to Ext.W4 and Ext. M1 to Ext. M9. No. oral evidence was adduced on either side.

8. The points for consideration are:

- (i) Whether the dismissal of the petitioner from service *w.e.f.* 21.07.2012 by the Respondent is legal and justified?
- (ii) What is any relief to which the petitioner is entitled?

The Points

9. Ext.W1 is the Show Cause Notice issued to the petitioner on 29.06.2011 for his absence from 02.06.2011. In Ext. W2, the reply the petitioner has stated that he was having his lungs checked up, that there is no ESI facility under the Management to apply for medical Leave, that he came to know after check up that his health is not alright, that he should be given ESI facility or his request for voluntary retirement, which is already made, should be granted. This explanation was not accepted and a domestic enquiry was initiated against the petitioner. Neither the petitioner nor the Respondent had produced the Charge Memo. It is not clear if explanation of the petitioner was sought after the charge memo. If any, issued.

10. In the enquiry proceedings held on 19.08.2011 the petitioner had admitted to have received a Show Cause Notice. The petitioner was asked if he was accepting the charges against him. He has replied that he had not attended duty as mentioned in the notice and he is accepting the same. On further enquiry, he has stated to the Enquiry Officer that he is not well, he is having pain in chest and heart, that his wife also is not well and had undergone a surgery for tumour of the chest and is having kidney problem also. The petitioner has explained that he did not attend work during the period in question for all these reasons. In the enquiry report the Enquiry Officer has stated that the petitioner has not submitted any

documents to prove the illness of himself and his wife. It was observed that he admitted to have been absent from work. Accordingly, he had found the charge to be proved. Ext. M5 is the Show Cause Notice issued to the petitioner proposing punishment of dismissal from service and calling for his explanation. In the reply marked as Ext. M6 the petitioner had repeated his contention of illness. Ext.W4 is the order of dismissal of the petitioner.

11. It could be seen from the Counter Statement that Show Cause notice was issued to the petitioner for his absence from 02.06.2011 till the date of the notice *i.e.* 29.06.2011. The Enquiry Officer has found him guilty of unauthorized for the period from 02.06.2011 to 29.06.2011. However, the basis for imposition of punishment by the disciplinary authority is not the report of the Enquiry Officer alone. It could be seen from Ext.M5 the Show Cause Notice proposing punishment, that the petitioner was described as a habitual absentee. The Respondent has stated in the Counter Statement that the petitioner had been absent without leave for several days on all the years 2005 to 2010. In Ext.W5 the Disciplinary Authority has stated that the past records of the petitioner were perused and it is evident that he was habitually absent from duty. The basis of the punishment is the absence in the previous years given in the Show Cause Notice. The details of the alleged disciplinary proceedings initiated against him for those absence also are given in the Show Cause Notice. It could be seen that the Disciplinary Authority was carried away by the past record said to have been perused by it. What is stated is that the petitioner had not corrected himself in spite of opportunities having been given. The punishment seems to have been made on the basis that the petitioner has failed to correct himself.

12. It has been pointed out by the counsel for the petitioner that this action of the Management in taking into account the records of past of the petitioner, if any was not justified when they are not brought as a charge against the petitioner and his explanation regarding these were not sought in the disciplinary proceedings. From the Show Cause Notice what is to be seen is that the petitioner is being punished for his aberration in the past service. However, this was not warranted in the absence of opportunity having been given to him. The counsel for the petitioner has referred to a similar circumstance in the case in *Sur Enamel and Stamping works Ltd Vs. the Workman/respondents* reported in AIR 1963 SC 1914 in this respect. It was a case where charge was one not but dismissal was for some other reason. The Apex Court has observed that this itself would be sufficient ground for setting aside the order of dismissal. There was no justification in the Management digging at the past records of the petitioner at the post enquiry stage without giving opportunity to him to explain the same.

13. The charge for which the petitioner has undergone enquiry is absence of 27 days for the period from 02.06.2011 to 29.06.2011. He has of course admitted in the enquiry proceedings that he was absent for the period. However, all along in his explanation to the Show Cause Notice and also in the enquiry proceedings, he has tried to assert that he had valid reason for absentsing himself during the period. The case of the Management is only that the petitioner was unauthorizedly absent during the period in question. It is not alleged that the absence was the result of willful and deliberate act on the part of the petitioner. True, the petitioner has not produced any documentary evidence in support his illness. However, in so far as there was no case of willful and deliberate absence on the part of the petitioner, the explanation has to be accepted. The counsel for the Respondent has been stating that the petitioner had been asking for voluntary retirement from service on the ground of illness which itself according to him would show that the petitioner was not willing to work. I am not able to agree with this proposition of the counsel. His request for voluntary retirement only means that he was willing to avail voluntary retirement from service if there was any scheme for the same and he was eligible for the same. The Respondent has written to the petitioner stating that there is no such scheme available. Such being the case it could not be assumed that the petitioner was not willing to work.

14. For the absence of 27 days for which the petitioner has faced enquiry, certainly, he was not liable to the penal punishment of dismissal from service. It is not in proportion to the gravity of the misconduct, in any case. In the decision in Chairman cum Managing Director, Coal India Ltd. and others Vs. Mukul Kumar Choudhury and others reported in 2009 15 SCC 620, the Apex Court has found the punishment of removal from service for unauthorized absence of six months grossly disproportionate. In the present case, the absence is only for 27 days. The punishment imposed is too harsh to commensurate with the charge. The petitioner is therefore entitled to be reinstated in service, but without back wages in the circumstances of the case.

Accordingly, an award is passed is follows:

- (i) The Respondent is directed to reinstate the petitioner in service within a month of the publication of the award.
- (ii) The petitioner will not be entitled to backwages, but will be entitled to continuity of service and all other attendant benefits.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29th July, (2115)

K.P. PRASANNA KUMAR, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None
For the 2nd Party/Management : None

Documents marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	04.08.2011	Enquiry notice issued to the petitioner
Ext.W2	10.08.2011	Reply given by the petitioner (with translation)
Ext.W3	24.08.2011	Second Show Cause Notice issued to the petitioner
Ext.W4	19.07.2012	Order of dismissal issued to the petitioner.

On the Management's side

Ex.No.	Date	Description
Ext.W1	29.06.2011	Show Cause Notice issued to the petitioner
Ext.W2	06.07.2011	Reply to petitioner to the Show Cause Notice
Ext.W3	19.08.2011	Proceedings of enquiry
Ext.W4	20.08.2011	Findings of the Enquiry Officer
Ext.W5	24.08.2011	Second Show Cause Notice proposing punishment of dismissal from service and calling for his explanation
Ext.W6	01.09.2011	Reply of the petitioner to the notice dated 24.08.2011
Ext.W7	06.09.2011	Respondent's reply to the letter of petitioner dated 01.09.2011
Ext.W8	27.02.2012	Petitioner's letter seeking voluntary retirement
Ext.W9	08.03.2012	Respondent's reply to petitioner's letter of 27.02.2012

नई दिल्ली, 14 अगस्त, 2015

का०आ० 1631.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ

इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट [रेफ. केश न. 08(C) ऑफ 2004] को प्रकाशित करती है जो केन्द्रीय सरकार को 14.08.2015 को प्राप्त हुआ था।

[सं एल-12011/54/2004-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th August, 2015

S.O. 1631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. Case No. 08 (C) of 2004] of the Indus.Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workman, received by the Central Government on 14/08/2015.

[No. L-12011/54/2004-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

Reference Case No.-08 (C) of 2004

Between the management of Central Bank of India, Zonal Office, Maurya Lok Complex, B-Block, Patna and their workman represented by the Dy. General Secretary, Bihar Provincial Central Bank of India. Employees Association, C/o-Central Bank of India, Moradpur, Patna.

For the management:- Sri Ghamshyam Chandra Das
(Manager, Law)

For the workman:- Sri B. Prasad, General Secretary,
Bank Employees Federation, Bihar.

Present:- Sri Bipin Dutta Pathak, Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, 22nd July, 2015.

By the adjudication order no;L-12011/54/2004-IR (B-II) dated- 28.06.2004 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section (1) and sub-section (2-K) of Section 10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as 'the Act'), the following dispute between the management of Central Bank of India, Zonal Office, Maurya Lok Complex, B. Block, Patna and their workman Sri Sunil Kumar, represented by the Dy. General Secretary, Bihar Provincial Central Bank of India Employees Association, Patna for adjudication to this tribunal:-

"Whether the action of the management of Central Bank of India, Zonal Office, Patna in terminating

the services of Shri Sunil Kumar working at Jamalput Branch of the Bank is justified and legal? If not, what relief the workman is entitled to?"

2. In this case award has already been passed on 5th May, 2005 by the then predecessor presiding officer of this tribunal. An award has answered in favour of the worker. The workers evidence is rather ex-parte and sufficient enough to establish his claim. Various Exts coupled with oral testimony of W.W.-1 amply prove that the worker's services were utilized by the Branch as casual labourer in leave vacancies of permanent Safai Karamchhari and / or sub-staff in a regular way. His claim for absorption in view of clause 3.1 of Ext.-W/6 appears to be well founded. The bank definitely resorted to unfair labour practice by denying his claim apart from violating the terms of settlement incorporated in Ext.-W/6. I am of considered view and hence, hold as such that the worker has un-hesitatingly established his claim and he is entitled to absorption as a sub-staff in Central Bank of India.

3. The management moved before the Hon'ble Patna High Court in C.W.J.C. No.11134 of 2005 and matter has been remitted back to this tribunal with a direction that the tribunal will be obliged to rehear the matter on behalf of the management and the workman on the question of finding regarding termination of services of the workman and whether he is entitled to reinstatement on the materials available or not.

4. Heard Mr. Ghanshyam Chandra Das (Manager, Law) on behalf of the management and Mr. B. Prasad on behalf of the workman.

Written submission has been filed on behalf of the management stating therein Industrial dispute was raised over alleged denial of regularization and wrongful termination from service of Sunil Kumar.

In written argument it has been stated that there was no relationship of employer-employee between the bank and the alleged workman. The manager who claimed to have employed the concerned workman had no authority to employ. As per record of the bank the concerned workman used to supply water on day to day basis contract between 01.08.1998 and 30.06.1989 and 01.01.1992 to 14.10.1992 and he was paid cost of water @ Rs. 10/- per day and @ Rs. 15/- per day respectively. Thereafter he never supplied water. Claim made by the workman was wrong. In fact workman used to supply off and on water on payment and in no single year he ever supplied water for 240 days or more Workman failed to proof with certainty that he ever worked as workman in the Bank for 240 days or more in a single calendar year against any leave Vacancy. Hon'ble Presiding Officer, Industrial Tribunal, Patna, gave award in favour of the concerned workman that he has established his claim and is entitled for absorption under the scheme of the Bank and directed to Bank to take up his case of absorption and appoint him as sub-staff subject

to eligibility criteria. The award was challenged before Hon'ble High Court, Patna in C.W.J.C. No.11134 of 2005 and matter was remanded back before this tribunal.

It has further been stated that there was no relationship of employer and employee relationship. The workman had been engaged intermittently orally on day to day basis on daily contract supply of water on payment. The workman has not discharged his onus by not producing any evidence to show that he worked continuously for more than 240 days in a year immediately before alleged termination. Workman has claimed regularization of service which is beyond the scope and ambit of concerned reference.

6. On the other hand argument on behalf of the workman is that award was rightly passed but in place of regularization word absorption has been written. While there should be order of reinstatement because termination from service of the workman Sri Sunil Kumar was found not legal and proper.

FINDINGS

7. The terms of reference is "Whether the action of the management of Central Bank of India, Zonal Office, Patna in terminating the services of Shri Sunil Kumar working at Jamalpur Branch of the Bank is justified and legal? If not, what relief the workman is entitled to?"

8. On behalf of the workman single witness Sri Sunil Kumar has been examined who has stated that he worked in Central Bank, Jamalpur from 01.01.1988 to 30.06.1989 continuously and later on he worked from 01.01.1991 to 05.08.2007. His work was to take out ledger and keep it on counter, take out token cash book etc. He worked from 10. A.M. to 6 P.M. and seldom after late hour. Initially he was paid Rs. 10/- per day which was enhanced to Rs. 35/- per day. He was working like permanent peon. He was working according to order of the Branch Manager. Payment was made through voucher from 01.01.1988 to 30.06.1989 he worked continuously for about 270 days.

To regularise of service of the workman who worked for 240 days. There was settlement at apex level. He submitted his representation for his regularization which is Ext. W/1. He was removed from service from 06.08.2002. No notice or compensation was paid to him. He claimed for reinstatement with back wages.

09. In cross-examination he has stated that he was appointed by Branch Manager. Appointment letter was not given to him. Attendance was not made in attendance register. He was not paid monthly salary like of other workers. He received Ext. W/4, W/4-1, W/4-2 through union leader. He had filed two voucher marked as Ext. W/5. He was appointed by Branch Manager namely Rampreet Prasad Singh. He studies of class IXth. He has not submitted qualification certificate because it was not demanded.

10. No witness has been produced on behalf of the management.

11. Ext. W, W-1, W-2 is the representation filed by Sri Sunil Kumar for his regularization, given to Regional Manager, Patna which is dated-18.12.1993, 17.05.1994, 31-12-1994 respectively.

Ext.-W/1 is School Transferred Certificate by which it appears that Sunil Kumar was reading in class-IXth.

Ext. W/2 is the letter sent by Branch Manager to Regional office, Gaya in which it has been stated that representation of Sunil Kumar is true and correct. He was working at casual labour in various department of the Branch in leave vacancy of permanent of sub staff and also exigency of the administration by the then Branch Manager. Which was sent to Regional Office, Gaya.

Ext. W/3 is the letter sent by Deepak Kumar Das, Senior Manager to Regional Office, Gaya in respect of representation of Sunil Kumar for payment after working more than 240 days in a year. Ext. W/3 confirmed that Sunil Kumar worked as casual labour in leave vacancies/ permanent Safai Karamchhari/sub-staff and also in exigency of the administration of the then Branch Manager.

There was no objection of Bank considering for appointment as Safai Karamchhari. There is also month wise statement of service taken from Sunil Kumar from August 1988 to June 1989 and August 1991 to Oct-1992. From which it appears that Sunil Kumar worked from August 1988 to June 1989 for 271 days and from August 1991 to Oct 1992 for 257 days.

Ext.-W/4 is the letter of Branch Manager sent to Regional Office, Gaya in which it has been stated that Sri R.P. Singh then Branch Manager had allowed Sri Sunil Kumar to work as casual worker in the Branch *w.e.f.* 01.08.1988. He allowed payment and signed on the vouchers. After transfer of Sri R.P. Singh, Branch Manager next incumbents Sri S.N. Prasad and Sri Gopal Prasad also utilized his service. He has empleted 240 days in a year.

Ext.-W/4-1 was sent to Senior Manager, Jamalpur by which details of month wise service taken was asked for.

Ext.-W/5 the payment voucher.

Ext-W/6 is the circular of Central Bank of India in which it has been stated that "Temporary employee who have put in 240 days of temporary service in any continuous period of 12 months after 01.01.1982 upto 31.12.1990 will be considered for absorption in the immediate available vacancies without any test and interview. (ii) "Qualification and age norms will not be insisted for them. Such candidates would not be entitled to arrears of wages and back dated weightage in seniority.

12. No document has been Extd. on behalf of the management.

13. Written statement has been filed on behalf of the management on 11.06.2015 stating therein that dispute was raised over alleged denial of regularization and wrongful termination from service of Sri Sunil Kumar. There is no relationship of employer-employee between the Bank and the alleged workman. The Manager who claimed to have employed the concerned workman has no authority to employee. The concerned workman used to supply water on day to day basis contract between 01.08.1988 to 30.06.1989 and 01.01.1992 to 14.10.1992. Workman was not in employment of the bank much less against any leave vacancy.

He used to supply off and on water on payment and in no single year he ever supplied water for 240 days or more. He failed to prove that he ever worked as workman in the bank for 240 days or more in a single calendar year against any leave vacancy.

It is pertinent to note that earlier award was passed stating therein that management have not advanced any sort of evidence either oral or documentary. They have course cross-examined W.W.-1, but nothing positive have come in their favour. Learned then Presiding officer of the tribunal had passed an award that the workers services were utilized by the branch as casual labourer in leave vacancies of permanent Safai Karamchari and / or Sub-staff in regular way. His claim for absorption in view of clause-3.1 of Ext.-W/ 6 appears to be well founded. The Bank definitely resorted to unfair labour practice. It was also allowed that he is entitled to absorption as a Sub-staff in Central Bank of India. The management moved to Hon'ble High Court in C.W.J.C. No.-11134 of 2005 and Hon'ble High Court had passed order "discussion and the evidence have been dealt with by the tribunal but unless a clear categorical finding with regard to the illegal termination is also recorded, there was no occasion for the Industrial Tribunal to give a direction for absorption of the workman and denial of back wages..... if the tribunal failed to understand that by giving a direction for absorption he was not allowing the benefit of reinstatement due to illegal termination, then the tribunal committed on error in this regard because the tribunal was bounded to give a clear and categorical direction on this count. The word reinstatement and absorption/regularization' are two different aspects and one does not precede the other but flows from the reinstatement."

14. Writ petition was allowed, matter was remanded back with a direction that tribunal will be obliged to rehear the matter both on behalf of the management and the workman on the question of finding regarding termination of services of the workman and whether he is entitled to reinstatement on the materials available or not.

15. The terms of reference is "Whether the action of the management of Central Bank of India, Zonal Office, Patna in termination the services of Shri Sunil Kumar working at Jamalpur Branch of the bank is justified and legal? If not, what relief the workman is entitled to?"

16. In the written statement the workman has stated that he was orally appointed by the management of Central Bank of India to discharge the duties of a peon from 01.08.1988 at Jamalpur Branch of the Bank. After appointment, he discharged his duties from 10 A.M. to 6 P.M. for which he was paid wages @ Rs. 10/- per day initially which was raised to @ Rs. 15/- per day and finally @ Rs. 35/- per day. He was allowed to work at Jamalpur Branch from 01.08.1988 to 30.06.1989 uninterruptedly. He was again allowed to work from 01.01.1991 to 05.08.2002 continuously. The scheme was formulated by the management in the year 1990-91. As per the scheme it was envisaged to regularize the services of the workman who had worked for 240 days in one calendar year. The branch office Jamalpur forwarded the case of the workman to the administrative office of the Bank on different occasion for regularizing his services as a peon. But no positive step was taken by the management. Workman went to perform his duties at Jamalpur branch of the bank on 06.08.2002 but he was stopped from working and was informed that his services stood terminated. Management have not filed any written statement denying this facts. On 09.09.2004 Regional Manager authorised one Sri Kamlesh Prasad to represent the management. In which it has been stated that Sunil Kumar used to supply water in Jamalpur Branch and payment was paid on the same day. Statement of day year wise of supply of water has been stated in this application. Ext.-W, W-2, W-3 is representations of the workman. Ext.-W, Ext-W/1 is transferred certificate. Ext-W/2 is letter sent by branch manager to Regional Officer Gaya. In which it has been stated that service of Sri Sunil Kumar was utilized at this branch as casual labour in various department of the branch in leave vacancies of permanent Sub-staff member and also exigencies of the administration by the then Branch Manager and officiating branch manager. This is the letter sent by branch manager. Which proves contention of Sunil Kumar that he was working as casual labour in various department of the branch in leave vacancy and Sub-staff as well as and also in exigencies of the administration. Ext-W/3 is also letter dt-23.06.1998 sent by senior branch manager Regional Office, Gaya. In which it has been stated that services was taken from Sunil Kumar and it was confirmed that Sri Sunil Kumar worked as casual labour in leave Vacancies, Safai Karamchari and/or Sub-staff and also in exigencies of the administration. It has been stated that senior branch manager has no objection if bank consider his appointment as Safai Karamchari. Which also proves case of the workman. As per statement attached with this letter during period from August 1988 to June 1989 Sunil Kumar worked for 271 days and from August 1991 to Oct. 1992 he worked for 257 days.

17. Again branch manager on 08.10.1993 sent letter to Regional Office, Gaya stating there as first Sri R.P. Singh then branch manager had allowed Sri Sunil Kumar to work as casual worker with effect from 01.08.1988.

Sri R.P. Singh branch manager or Sri G. Jha, Asst. (M) allowed payment and signed on the vouchers. After transfer of Sri R.P. Singh, Branch Manager, Next incumbents Sri S.N. Prasad and Sri Gopal Prasad also utilised his services whose break up has been given. There 01.08.1988 to 31.12.1988 total working was 148 days and 01.01.1992 to 14.10.1992 total working was 227 days.

Next Ext.-W/4 sent to Mr. D.K. Das, Senior Manager. From Ext.-W/6 it appears that temporary employee who have completed 240 days of temporary services in any continuous period of 12 months after 01.01.1982 up to 31.12.1990 will be considered for absorption in immediate available vacancy without any test or interview. Qualification and age norms will be not be insisted for them. Such candidates will be considered for appointment first before initially any recruitment process. Such candidates would not be entitled to arrears of wages and back dated weightage in seniority. Sunil Kumar had worked from August 1988 to June 1989 for 270 days as such he has completed 240 days and became a protected employee. Further he worked from 1991 to Oct. 1992 for more than 257 days. Management documents itself prove the case of the workman.

18. The decision has been reported in 2015-II-LLJ-335 (SC) in the matter of absorption-regularisation. In this case CGIT had directed absorption, set aside by single bench. Division bench affirming order held that appointment letters stipulated appointments as temporary and to be terminated since workman accept terms of appointment, claim for regularization or automatic absorption cannot be raised. The Hon'ble S.C. held that CGIT rightly over-ridden compromise and passed award in favour of workmen. Awards in relation to absorption of workmen as permanent workmen in corporation got statutory force. Award of CGIT was restored. Corporation was directed to absorb workmen in permanent posts and consequential benefit to be paid if workmen attained superannuation.

19. In view of the above finding of the apex court argument of the management cannot succeed. Termination of the workman was not under condition of the section-25F of the Industrial Disputes Act, 1947. Workman became protected workman since he has completed 240 days in a year.

20. In that view of the matter discussed above termination of the service of Sri Sunil Kumar working at Jamalpur Branch of the Bank is not justified and legal. Since termination of his service is not justified, legal. So Sri Sunil Kumar is entitled to reinstatement on the materials available on the record.

21. Hence, award is answered that the action of the management of Central Bank of India, Zonal Office, Patna in terminating the services of Sri Sunil Kumar working at

Jamalpur Branch of the Bank is not justified and legal. He is entitled to reinstatement from the date-06.08.2002 when he was terminated from services. He is also entitled to get all consequential benefits including back wages for which he is entitled to.

This is my award accordingly.

Dictated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 14 अगस्त, 2015

का०आ० 1632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पटना के पंचाट [आई डी केश नं० 02 (C) ऑफ 2011] को प्रकाशित करती है जो केन्द्रीय सरकार को 14.08.2015 को प्राप्त हुआ था।

[सं० एल-39025/01/2010-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th August, 2015

S.O. 1632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Case No. 02 (C) of 2011] of the Industrial Tribunal-cum-Labour Court Patna as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government 14/08/2015.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

Industrial Dispute Case No.:— 02(C) of 2011

Between the management of Zonal Manager, UCO Bank, Fourth Floor, Block 'A', Maurya Lok Complex, Dak Bunglow Road, Patna-800 001 and Their workman Sri Arya Nath Singh, S/o. Late Uttam Singh, Vill. + P.O. Takkipur, P.S. Maharajganj, Distt. Siwan.

For the workman:—Shri B. Prasad, State Secretary, UCO Bank Employees Association.

For the management:— Shri Ashok Kumar Sinha, Branch Manager, ADB, Ghogha, Bhagalpur.

Present:— Bipil Dutta Pathak

Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dated 20th July, 2015.

This case has been filed on behalf of the workman Sri Arya Nath Singh, Head Cashier, UCO Bank, Municipal

Chowk, Chapra, branch against his dismissal from the service of the Bank by the management of UCO Bank, Zonal Office, Maurya Lok Complex, Block 'A', Fourth Floor, Patna-800 001, u/s-2A (1) & (2) of the Industrial Disputes (Amendment) Act, 2010.

The statement of claim of workman, it has been stated that Industrial Dispute had been raised on behalf of the workman on 15.02.2010 and conciliation proceedings ended in failure on 02.02.2011.

Application has been filed for adjudication of the following dispute:—

"Whether the action of the Management of UCO Bank, Zonal Office, Patna in imposing the punishment of Dismissal from Bank's Service without Notice on Sri Arya Nath Singh, Head Cashier, Chapra Branch is legal and justified? If not, what relief (S) the workman is entitled to?"

The facts of the case is that workman was appointed in the bank as Godown Keeper on 15.12.1975 on compassionate ground in place of his elder brother. He has been selected for the post of Head Cashier Category 'E'. While working at Chapra Branch, some internal auditors inspected the branch and reported alleged shortage of cash on the opening day of 7th June 2006. Fact remains that there were some withdrawal slips, which has not been taken into consideration. There was no shortage of cash at the closing time of cash on 7th June, 2006. The workman was issued a charge sheet dated 26.07.2006 duly signed by the Chief Officer in the capacity of Disciplinary Authority. Domestic enquiry was held, enquiry officer and presenting officer were duly appointed.

Enquiry officer did not hold the enquiry fairly and properly. Enquiry officer *Suo-moto* marked papers submitted by the management as Exts and did not take any step for proving the genuineness of the documents and arbitrarily marked those documents as Exts. Enquiry officer concluded the enquiry in a day on 19.09.2007. Enquiry officer completely ignored the rules of evidence. Findings of enquiry officer are not based on reasoning material facts.

The cash of the bank was kept under Joint custody during the night of 06.06.2006 and one of the Joint custodian was Asstt. Manager of UCO Bank Chapra Branch. Workman was forced to admit the guilt.

Assistant Manager was punished by the Disciplinary Authority on the identical charges for lowering down his two annual increments but he was exonerated by the Appellate Authority. Workman was imposed the punishment of dismissal from the services of the Bank without any notice. The workman was not paid full salary and allowances as subsistence allowance as per his service condition during the period of his suspension.

The order for imposition of the punishment of dismissal from the service of the bank was passed by the appellate authority in the capacity of Zonal Manager. The workman was never made aware that the Zonal Manager was his Disciplinary Authority. The workman preferred appeal against the order of dismissal and without proper application of his mind appellate authority upheld the order of dismissal passed by the learned disciplinary authority.

The order of dismissal is based on the perverse findings of the enquiry officer. Workman was aware that the Chief Officer was the Disciplinary Authority and Assistant General Manager was the Appellate Authority. As such the order of dismissal passed by the Zonal Manager is void ab initio. There was discrimination in awarding the punishment of dismissal on the workman and exonerating the other fellow officer who faced the identical charges.

It has been stated that the workman is innocent. Prayer has been made that order of dismissal dated 11.01.2008 along with order of Appellate Authority, dated 31.10.2008 be set aside and workman be reinstated with all consequential benefits and management is directed to pay a sum of Rs. 20000/- to the workman for contesting the dispute.

3. Written statement has been filed on behalf of the management stating therein that order of punishment has been passed by the competent authority by following due process of law and providing full opportunity of hearing to the workman Sri Arya Nath Singh. He committed some irregularities for that charge sheet dated 26.07.2006 was issued. Which are as follows:—

(i) That during the course of regular inspection of Chapra Branch, the Inspecting Officer, while checking the opening cash balance on 07.06.2006, found the cash shortage to the tune of Rs. 78979.14. It is noted that Shri A.N. Singh was the Joint Custodian of cash keys on those days. The shortage of cash was noted by the Inspecting Officer in the Cashier's Summary dated 07.06.2006, which was counter signed by Shri Singh. On the same day Shri Singh made good loss by depositing the amount in cash of Rs. 78979.14, which was kept in Sundry Creditors, under his signature as depositor.

(ii) that on 07.06.2006. M/s. Sahara Indian presented a cheque No. 072181 bearing dated 07.06.2006 for withdrawal of cash of Rs. 3,00 lacs. Shri Singh then paid a sum of Rs. 2.00 lacs and gave them a counterfoil of deposit slip for Rs. 1.00 lac under his signature with Bank Seal. But he did not account for the same in their account on 07.06.2006, as the entry did neither take place in cash receipt Book nor in the Cashier's Summary as late receipt on that very date. To cover the misdeed, he put an entry of Rs. 1.00 lac in the cash scroll on 08.06.2006 which was later found superfluous as no money was deposited in the account of M/s. Sahara India on 08.06.2006. His action had brought disrepute to the Bank.

Charge sheet served to Sri Arya Nath Singh, which was received by him on 22.09.2006 but he did not submit his reply/written statement of defence. As such it was decided to conduct a domestic enquiry. R.C. Gupta, Senior Manager, P.I. Area Branch, Patna was appointed as the enquiry officer and Sri D.C. Das, Assistant Chief Officer, Regional Office, Patna was appointed as presenting officer. Subsequently the involvement of some more officials surfaced and as such Assistant General Manager, Zonal Office, Patna was appointed common Disciplinary Authority by Chairman and Managing Director on 20.04.2007 and newly appointed Disciplinary Authority *vide* notification dated 28.07.2007 appointed Sri Birendra Singh, Dy. Chief Officer, Regional Office, Patna and Sri Kameshwar Prasad, Asst. Chief Officer, Regional Office, Patna as the Presenting Officer. In enquiry written brief was submitted by Presenting Officer and Defence Representative. Enquiry Officer submitted his report dated 22.09.2007 holding allegation No. (1) & (ii) as proved and the corresponding charge is proved. Disciplinary Authority examined the charge sheet issued to Sri Arya Nath Singh, his reply the enquiry proceedings etc and the arguments of the Presenting Officer and Defence Representative and concurred with the findings of Enquiry Officer. A copy of the proposed punishment was also communicated to Sri Arya Nath Singh who was proved opportunity of personal hearing which he could not attend. Personal hearing was held on 11.01.2008 and awarded the punishment dismissal from bank service with notice. Sri Arya Nath Singh preferred an appeal dated 08.02.2008, a personal hearing was given to him along with defence representative. Appellate Authority did not find any reasons to interfere with the punishment award by Disciplinary Authority.

The Assistant General Manager, Regional Office, Patna was appointed as common Disciplinary Authority by the Chairman and Managing Director of the bank *vide* order dated 23.04.2007 in accordance with clause 13 of the memorandum of settlement dated 10.04.2002.

Sri Arya Nath Singh himself *vide* his letter dated 07.06.2006 addressed to the Manager, UCO Bank, Chapra accepted the responsibility of shortage of cash.

4. Rejoinder on behalf of the workman to the written statement cum rejoinder of the management dated 13.06.2011 has been filed.

5. One witness has been examined on behalf of the management namely Balaram Basak who is Chief Manager, UCO Bank, Shivpur Branch Hawarh. This witness has stated that he is acquainted with Sri Arya Nath Singh. Who was then Head cashier at Chapra Branch of UCO Bank. Assistant General Manager had authorised to inquire into the matter of default against the Arya Nath Singh. He inquired and submitted the report which has been marked as Ext.-M.

On 07.06.2006 investment officer Mr. D. Zaina inspected the cash of the branch and he found shortage of Rs. 78979.14Ps was shortage in the balance of 06.07.2006. Which was stated in cash summary. Mr. Arya Nath Singh accepted the facts in writing and as deposited the cash in the branch which was deposited in sundry credit and shortage of cash was adjusted. This witness has perused the documents before investigation. This witness has proved Ext./M1. Ext./M1 which is details of cashes summary and actual cash and cash short. This has been marked as with objection. He has also proved Ext./M2 which is letter of Shri Arya Nath Singh it appears that Arya Nath Singh has asked permission for depositing the cash. This document has been marked with objection. In cross-examination he has stated that on 09.06.2006 he had gone to Chapra for enquiry. He has stated that Ext.-W was not given to him by defence. Ext.-W is the letter given to Branch Manager by Arya Nath Singh in which it has been stated that he was compelled to write a letter about cash shortage and he was compelled to accept his guilt. He has stated that at the time of closing the cash tallied. He found some cheque and withdrawal slip. In charge of cash was Arya Nath Singh and Shambhu Saran Singh, Assistant Manager. It is the responsibility of both the person to maintain the cash properly. The day on which the shortage of cash was found. Cash tallied at the time of closing. He has found some cheque and withdrawal slip along with cash. This witness has further stated that he had written that cash was compensated by withdrawing by sundry letter. He has stated that for debiting the amount from account of sundry letter signature is required but he had not seen signature of Arya Nath Singh on sundry letter, that amount be withdrawn from sundry letter account to compensate the cash and on withdrawal from sundry letter entry is made in token book.

That witness has further stated that he has inspected token book, but there was no entry for withdrawal amount from sundry letter account. Further he has stated that in cash manual of UCO Bank, it has been stated that on shortage of cash concerned employee compensates the shortage. Further he has stated that after his investigation there was enquiry in the case.

6. 21 documents has been marked as Exhibited on behalf of the management. Which will be dealt with the findings.

7. One witness namely Arya Nath Singh was examined on behalf of the workman. Arya Nath Singh has stated that he was posted at Head Cashier at Chapra Branch of UCO Bank. On 07.06.2006 inspecting officer has checked his cash. Manager had got done late payment of some withdrawal of cheque. In cash verification cash short was found because manager had got done late payment of withdrawal and cheque. When cash short was found then amount was taken from person, by him and manager to whom late payment was made. On 07.06.2006 at the time

of cash closure, there was no shortage. He given a letter to the Branch Manager in the matter which has been marked as Ext.-W. This witness has denied to that cheque to Sahara India of the amount Rs. 3.00 lacs and he has made payment of Rs. 2.00 lacs. He has stated that all charges against him is wrong.

In cross-examination this witness has stated that he joined UCO Bank on 15.12.1975 and worked there till 2006. Bank has dismissed him. Bank has given him show cause notice and charge sheet but later on he says that show cause notice was not given to him. He has participated in the enquiry, but no opportunity was given to him to place his facts.

He was present on cash closure on 06.06.2006. He has denied that there was shortage of cash in opening balance on 07.06.2006. He has proved ledger extract dated- 07.06.2006. Which has been marked as Ext.-M/3.

In reply to the question put by the management that opening balance on 07.06.2006 will be closing balance of 06.06.2006. This witness has stated that there is no mention in the charge sheet that at the time of checking only one withdrawal of Rs. 1000/- of cheque and Rs. 1000/- was found. He has further stated that payment was made of the cheque of the amount Rs. 3.00 lacs of Sahara India. He had denied he had paid only 2.00 lacs to Sahara India. He had further denied on 07.06.2006 he had given receipt of deposit of Rs. 1.00 lac in account of Sahara India on 07.06.2006. He has further denied that he had made entry in cash scroll of Rs. 1.00 lac on 08.06.2006.

Further he has stated that on 07.06.2006 Branch Manager was on leave and Assistant Branch Manager, Shambhu Saran Singh was incharge.

8. One document has been marked as Ext.-W.

9. Written argument has been filed on behalf of the workman stating therein that two charges were against the workman Sri Arya Nath Singh:—

- (i) A cash shortage of Rs. 78,979.14 Ps was found by the inspecting officer while checking the opening cash balance on 07.06.2006. The shortage of cash was noted by the inspecting officer in the cashier's summary dated- 07.06.2006 which was also counter signed by you. On the same day, the loss was made good by depositing the amount in cash which was kept in sundry creditor's A/C.
- (ii) On 07.06.2006 M/s. Sahara India presented a cheque bearing No. 072181 dated- 07.06.2006 for withdrawal of cash of Rs. 3.00 Lacs, out of a sum of Rs. 3.00 Lacs only a sum of Rs. 2.00 Lacs was paid and a sum of Rs. 1.00 Lac was retained and a counter foil for deposit of the same was given to them. To cover the misdeed an entry of Rs. 1.00 Lac was made in cash scroll

on 08.06.2006 which was found later on superfluous as no money was deposited in the account of M/s Sahara India on 08.06.2006.

It has been further stated that Shambhu Saran Singh, Assistant Manager was one of the joint custodian of the cash. There was no application for grant of advance from Sri A.N. Singh for debiting sundry debtor's account. Cash was not found short at 3.00 P.M. on 07.06.2006. As per cash manual shortage to be made good. Co-accused Shambhu Saran Singh was not imposed any punishment.

10. Written argument of management, need not to be considered.

FINDINGS

11. As per Ext.-M/4 charge sheet against the workman was no:- (i) That during the course of regular inspection at your branch, the inspecting officer, while checking the opening cash balance on 07.06.2006, found the cash shortage to the tune of Rs. 78,979.14Ps. It is noted that you were the joint custodian of cash keys on those days. The shortage of cash was noted by the inspecting officer in the cashier summary dated 07.06.2006, which was also countersigned by you. On the same day, you made good loss by depositing the amount in cash of Rs. 78,979.14 Ps, which was kept in sundry creditors, under your signature as depositor.

- (ii) That on 07.06.2006, M/s Sahara India presented a cheque bearing no. 072181 dated- 07.06.2006 for withdrawal of cash of Rs. 3.00 lacs. You then paid a sum of Rs. 2.00 lacs and gave them a counterfoil of deposit slip for Rs. 1.00 lac under your signature with bank seal. But you did not account for the same in their account on 07.06.2006, as the entry did neither take place in cash receipt book nor in the cashier's summary as late receipt on that very date. To cover the misdeed, you put an entry of Rs. 1.00 lac in the cash scroll on 08.06.2006 which was later on found superfluous as no money was deposited in the account of M/s. Sahara India on 08.06.2006. Your such action has brought disrepute to the bank.

12. In respect of charge No. (i) management witness was the investigation officer who has proved Ext.-M. From Ext.-M it appears that last entry in the key register was 28.06.2004. Cash was counted in the presence of both the key holders, Mr. S.S. Singh, Assistant Manager and Mr. Arya Nath Singh, Head Cashier. On going through the cashier's summary, there was no initial/signature of the manager under the column verified which goes to indicate that there was no practice of cash checking by the branch head on a regular interval. Mr. A.N. Singh made a representation to the manager of the branch, sought permission to make good of the shortage. He also admitted his fault. Amount was paid in cash, which has been kept in

sundry creditors. This witness has stated that inspecting officer was Mr. D. Jena but D. Jena was not examined in the case. In cross-examination he has stated that Ext. M/1 was not given to him at the time of investigation. Further he has stated that the day shortage in cash was found, the case tallied at the time of closure. So there may be some error and it has been stated that Mr. Arya Nath Singh had deposited the amount and cash was adjusted. It has not been stated that cash was utilised by Sri Arya Nath Singh. Further he has stated that for debiting the amount from account of sundry letter, signature is essential but this witness has not seen signature of Sri Arya Nath Singh. For withdrawal from sundry letter entry is made in token book but there was no entry in token book so entire charge appears to be matter of misconception. Ext.-M/1 is the statement of actual cash but actual cash summary has not been stated. Ext.-M/2 is the letter of Arya Nath Singh who accepted his guilt and sought permission for depositing the amount but management had to succeed on his own leg. Ext.-M/3 is dated 07.06.2006 details in cash in hand. From Ext.-M/5 it appears that Shambhu Saran Singh, Assistant Manager and Mr. Arya Nath Singh, Head Cashier both were alleged accountable in the matter. Ext.-M/6 the details of domestic enquiry which need to be considered at present because order is being passed on the merit of the case.

13. It appears that management has not taken interest in contesting the case neither Mr. Jena was not examined nor complainant was examined. What happened to Mr. S.S. Singh who was co-responsible in matter has not been explained. The cash tallied on the same day when it was found short. The charge No. (i) could not be proved and established by the management.

14. About the charge No.-(ii) neither any witness from Sahara India has been examined nor management witness has stated any words against charge No.-(ii). So it appears that management was not interested to prove the charge No.-(ii).

15. Hence it appears that both the charges have not been proved and established by the management. In the circumstances management completely failed to succeed and prove the charge levelled against the Sri Arya Nath Singh. In the result, it is held that action of the management in imposing the punishment of dismissal from bank's service without notice on Sri Arya Nath Singh, Head Cashier, Chapra branch is not legal and justified. Hence punishment awarded by disciplinary authority vide order dated-11.01.2008 which was dismissal from bank service without notice is hereby set-aside and it is held that it is not legal and justified and Arya Nath Singh be reinstated with all consequential benefits of which he is entitled to be reinstated from the date his dismissal.

Dicated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 14 अगस्त, 2015

कांआ० 1633.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय कोल्हापुर के पंचाट (रेफ आई. टी.) नं० 8 ऑफ 2007 को प्रकाशित करती है जो केन्द्रीय सरकार को 14.08.2015 को प्राप्त हुआ था।

[सं एल-12011/36/2007- आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th August, 2015

S.O. 1633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. (IT) No. 8 of 2007**) of the *Indus. Tribunal-cum-Labour Court Kolhapur* as shown in the Annexure, in the industrial dispute between the management of **Bank of Maharashtra** and their workmen, received by the Central Government on 14.08.2015.

[No. L-12011/36/2007-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL, MAHARASHTRA, KOLHAPUR

REFERENCE (IT) NO. 8 OF 2007

Adjudication between:

The Asstt. General Manager,
Bank of Maharashtra,
LIC Building, 'Jeevan Tara',
Powai Naka, Satara.

.....First Party

And

The Secretary,
Bank of Maharashtra Karmachari Sangh,
185, Shaniwar Peth, Near Police Gate,
Pune.

.....Second Party

Coram : Shri K.R. Pethkar, Presiding Officer

Appearance : Both parties absent.

AWARD

(Date: 10th April, 2014)

The Desk Officer, Government of India, Ministry of Labour, New Delhi, by his order dated 10.09.2007 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute between the above named parties for adjudication to this Tribunal over the following demand of the 2nd Party.

"Whethere the action of the management of Bank of Maharashtra, Satara to close the certain branches by forming nodal cell and mechanisation of rural branches without discussion with the union is legal and justified? If not, to what relief the concerned workman is entitled?"

1. The 2nd party has put forth his Statement of Claim at Ex. U-1 as follows:—

The Bank of Maharashtra is a Nationalised bank having its head office at Lokmangal, 1501, Shivajinagar, Pune 411005 and Asstt. General Manager, Bank of Maharashtra, LIC Building, Jeevan Tara, Powai Naka, Satara is a second party to the dispute. The Bank of Maharashtra Karmachari Sangh, Pune is the trade union registered under Trade Unions Act.

2. The Second Party states that the service conditions of the bank employees are governed by Desai and Shastri Award, various Bipartite Settlements and Agreements taken place from time to time.

3. The Second Party states that after VRS 2000 so many staff accepted voluntary retirement hence bank was facing acute shortage of staff. To overcome this problem, bank has started Rural Branch Mechanisation Programme project. For this purpose bank has selected nearby branches and prepared a cluster of Satara Region 7 nodal centers were formed *i.e.* (1) Satara city (2) Powai Naka, Satara, (3) Umbraj, (4) Karad, (5) Pusegaon, (6) Koregaon, (7) Wai.

The bank has selected computer operators for Nodal Centers after taking their test and qualifying the test by them, bank has appointed computer operators to these nodal cells.

4. The Second Party states that the Bank has closed all nodal centers except Satara city and working of all branches was convered at Satara city Nodal Cell.

5. The Second Party states that in the light of the above we can confidently infer that the action of the management to close the Nodal Centers unilaterally is a violation of Settlement made before ACL Pune and violation of Sec. 29 of the I.D. Act. Hence it is prayed that reference be allowed and management be instructed to discuss with the union before taking any such decision. The management should explain the status of Umbraj Nodal Centre as well as other Nodal Centres and the action be initiated against the management for violation of Settlement before Asstt. Labour Commissioner, Pune and Sec. 29 of I.D. Act.

6. The Ist Party objected this reference by filing Written Statement Ex. C-3. The averment in the Statement of Claim of the Second Party are totally denied by the Fist Party. It is stated that the issue of posting of computer operators at these Centres was discussed with the recognised majority union. Accordingly settlment for posting of computer operators Nodal Centres was arrived

at with recognised majority union on 31/03/2003 and with the disputant union *i.e.* Bank of Maharashtra. Workers Organisation on 23.05.2003. The instant dispute pertains to Umbraj Nodal Centre.

7. The First Party states that in the present dispute, the disputants have cotended that the bank has closed all Nodal Centres in Satara Region except Satara City Nodal Centre. It is also stated that the management of the Bank should have discussed the issue with them before closure of Nodal Centres, to enable them to make their suggestions for avoiding such closure and for amicable settlement of issue of posting of employees posted at such nodal centres.

8. In this regard it is stated that the bank had decided to mechanise/computerize all rural branches under BIBAS project and hence had decided to discontinue Nodal Centres. After discussion with disputant union the bank had arrived at settlement with the disputants on 14.03.2006 as regards closure of nodal centres and treatment to be given to employees/computer operators posted in such nodal cells. Accordingly the bank had initiated necessary steps for closure of nodal centres and computer operators pasted in such nodal centres were transferred to the place of their choce after obtaining options from them. As a consequence of closure of nodal centres there has been no retrenchment of staff in any category and staff were given posting as per their choice. It is prayed that the reference be rejected.

9. Considering the rival pleadings of the parties my learned predecessor framed the following issues at Ex. O-8 and I record my findings against them for the reasons given below:—

Issues	Findings
(i) Does the Second Party sangh proves that the action of the First Party-management of Bank of Maharashtra, Satara to close the certain branches by forming nodal cell and mechanization of rural branches without discussion with the union is legal and justified?	In the Negative
(ii) Does the Second Party prove entitled for the reliefs claimed?	In the Negative
(iii) What award?	As per order below

REASONS

10. The conciliation proceeding papers are on record. After framing the issues none present for Second Party Union. Several opportunities were given. Hence evidence of Union is closed and kept for evidence of First Party bank. The First Party bank remained absent. The bank has

also not let any evidence. Hence evidence of First Party is closed and kept for argument/order.

11. Thereafter the First Party bank present with Shri Umesh Shinde. He has filed pursis at Ex. C-5 stating that Second Party Union does not have any grievance in respect of demands made in the reference. Therefore he prayed that the present reference may please be disposed of for want of prosecution on behalf of Second Party Union.

12. My Learned Presdecessor has filed order on 14/10/2008 that Shri Umesh Shinde present on behalf of First Party bank. None present for Karmachari Sangh, although called out repeatedly. Reference to proceed and kept for further hearing.

13. After careful perusal all the documents on record as well as pleadings of the parties, it appears to me that, to prove Statement of Claim, the Second Party has not filed its affidavit nor reiterated the facts contained in its statement of claim in its affidavit. Moreover, there is nothing to disbelieve the contention of the First Party which is fully supported by filing pursis at Ex C-5. Absolutely, the Second Party has not appeared in reference nor produced any document on record nor adduced any evidence. Therefore, I have no alternative but to accept the case of First Party is to be true.

14. From the above discussion it is seen that on several occasions, the Second Party union remained absent in the court and not proved its case, therefore, an adverse inference can be drawn against the Second Party. In such circumstances only the question before me is to see whether the action of First Party bank to close the certain branches by forming nodal cell and mechanization of rural branches without discussion with the union is legal and justified or not?

15. Taking into consideration the orders passed by my Learned Presdecessor on several dates as well as documents on record, I have no hesitation to hold that, the Second Party union is not entitled to get any relief as sought in the Statement of Claim.

Hence, I answers Issue No. 1 and 2 in the Negative and proceed to pass the following order.

ORDER

- (i) The reference is hereby answered in the negative.
- (ii) No orders to cost.
- (iii) Five copies of this Award be sent to the Desk Officer, Ministry of Labour, Government of India, New Delhi for publication and necessary action.

Kolhapur, K.R. PETHKAR, Presiding Officer
Dated: 10th April, 2014

नई दिल्ली, 14 अगस्त, 2015

का०आ० 1634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नई दिल्ली के पंचाट (संदर्भ सं० 63/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.8.2015 को प्राप्त हुआ था।

[सं. एल-12011/49/2012-आई आर (बी-II)
रवि कुमार, डेस्क अधिकारी

New Delhi, the 14th August, 2015

S.O. 1634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 63/2013) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1* New Delhi as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 14/08/2015.

[No. L-12011/49/2012-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 63/2013

Shri Ishwar Singh Chhokar,
Canara Bank Workers Organization,
BO: Shakti Nagar, Canara Bank,
Delhi.

Workman

Versus

The Deputy General Manager
Canara Bank, Ansal Tower,
8th Floor, 38 Nehru Place,
New Delhi.

...Management

AWARD

A reference was received by this Tribunal under section 10(2)(a) read with clause 1(d) of the Industrial Disputes Act, 1947 from the appropriate Government to answer the following:

"Whether the action of the management of Canara Bank in imposing the punishment of stoppage of one increment without cumulative effect vide order dated 12.04.2008 upon Shri Ishwar Singh Chhokar. Special Assistant, is legal and justified? What relief the workman is entitled to?

2. Claim statement was filed by Shri Chokker pleading that he was working as Special Assistant at Shakti Nagar branch since 18.11.2006. He was connected with trade union operating in the establishment of the management, but due to several reasons during the course of time downsized the union activities. Since his transfer to Shakti Nagar branch, the Senior Manager, Shri S.K. Panda along with others were deliberately targeting the claimant under a properly hatched conspiracy by the rival union leaders in connivance with other officials of the branch. Shri R.K. Arora, the General Manager was also informed about the conspiracy as well as the harassment caused to him.

3. The claimant requested for a change of seat as he did not want to work with Shri Joginder Singh, who was in the habit of not doing his duty, using abusive language and also physically manhandling staff. He faced insubordination and misbehaviour at the hands of Shri Joginder Singh. The Senior Manager, Shri Panda colluded with the others in order to frame him in serious charges.

4. On 05.03.2007, while distributing the wedding card of his daughter at the branch, he heard Joginder Singh abusing him. When confronted, Shri Joginder hit the claimant with a stick and injured his two fingers. Later on, Shri Joginder was asked to leave the branch at around noon. On 06.03.2007, the claimant requested that he be allowed to mark his attendance on 05.03.2007. It was initially allowed by the Senior Manager, but had not authenticated it. The Chief Manager also refused to authenticate it, hence he struck off his signature in the presence of the Manager. Hence, he was charge sheeted for refusal of work and for having tampered bank records. The Enquiry Officer was based against him. During the enquiry proceedings, he was not given reasonable opportunity to defend the charges. The enquiry was not conducted in a fair and proper manner and is ultra-vires, illegal, unconstitutional, malafide with ulterior motive. Order dated 12.04.2008 imposing punishment of 'Bringing down to a lower stage in scale of pay by one stage for a period of one year without cumulative effect' has been passed by the Disciplinary Authority without application of mind.

5. Demurral was made by the management pleading that the dispute has not been properly espoused and is also barred on the grounds of delay and laches. The claimant was posted as Special Assistant at Shakti Nagar branch from 18.11.2006 to 23.03.2013. On 05.03.2007, when the claimant was allotted work, he informed the Senior Manager that he was proceeding on leave. On the said date, at about 11.30 a.m. a quarrel broke out between the claimant and Shri Joginder Singh, sub-staff, which affected the normal functioning of the bank. An investigation was ordered and it was observed that the claimant refused to work on the allotted seat, picked up a quarrel with Shri Joginder Singh in the branch premises and also tampered with bank's record by signing the attendance register, cutting/striking the leave mark by the

Senior Manager in the register. Based on the report of the Investigating Official, explanation of the claimant were called, which was not found satisfactory. Hence charge sheet dated 12.10.2007 was served on him. Departmental enquiry was constituted against him and based on findings of the Enquiry Officer, punishment of 'brought down to a lower stage in scale of pay by one stage for a period of one year without cumulative effect' was imposed upon him by the Disciplinary Authority. Management pleads that the enquiry was held in a just and fair manner and punishment was imposed in accordance with provisions of Canara Bank Service Code and keeping in mind the gravity of charges leveled against the claimant. Prayer has been made that the claim may be brushed aside.

6. On perusal of pleadings, following issues were settled:

- (1) Whether dispute has not acquired status of an industrial dispute for want of espousal by a union or by considerable number of workmen in the establishment of the management?
- (2) Whether delay of above five years in raising the dispute frustrates the claim?
- (3) Whether enquiry conducted by the management is just, fair and proper?
- (4) As in terms of reference

Issue Nos. 1 and 3 were treated as preliminary issues. The claimant examined himself in support of his claim on the preliminary issue. Management filed affidavit of Shri M.M. Sharma as evidence and the case was listed for testimony of the management witness. In the meanwhile, Shri Chokker moved an application on 15.12.2014 for withdrawal of his case on health grounds as well as him impending retirement on 31.12.2014.

7. Since the workman himself is interested in withdrawing his case, no fruitful purpose will be served by continuing the present proceedings. As such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated: July 30, 2015.

नई दिल्ली, 14 अगस्त, 2015

का०आ० 1635.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकता के पंचाट (संदर्भ सं० 02/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.8.2015 को प्राप्त हुआ था।

[सं. एल-12012/203/2013-आई आर (बी-II)]

रवि कुमार, डैस्क अधिकारी

New Delhi, the 14th August, 2015

S.O. 1635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 02/2004) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court*, Kolkata as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 14/08/2015.

[No. L-12012/203/2013-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 02 of 2004

Parties: Employers in relation to the management
of Bank of India

AND

Their workmen.

Present: Justice Dipak Saha Ray
....Presiding Officer

Appearance:

On behalf of the : Mr. R.N. Majumder, Ld. Counsel.
Management

On behalf of the : Mr. M.S. Dutta, Ld. Counsel.
Workmen

State: West Bengal. Industry: Banking.

Dated: 3rd August, 2015

AWARD

By Order No.L-12012/203/2003-1R(B-II) dated 30.01.2003 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Bank of India in dismissing Shri Subal Das, Ex-Sweeper from service is legal and justified? If not, what relief Shri Subal Das is entitled to?"

2. The case of the workman, in short, is as follows:

The concerned workman was a permanent sub-staff Sweeper of the Bank of India, Nabapally Branch. He also used to perform the job of Cash Peon in addition to his duties. It is alleged that without serving any notice the management Bank imposed punishment of dismissal on the allegation that he committed theft on 29.06.1999 by removing one bundle consisting of ten packets of Rs. 500

denomination currency notes amounting to Rupees five lac from the currency chest situated on the ground floor of Nabapally Branch of the Bank. It is alleged that the workman was not given reasonable opportunity to defend himself and that he was denied to cross-examine the prosecution witness and that the principles of natural justice was violated in holding the domestic enquiry. It is further alleged that the domestic enquiry on the basis of which management imposed punishment of dismissal, was not legal, valid and proper. Accordingly, it is prayed that the order of dismissal passed by the management may be set aside.

3. The management has opposed the case of the workman by filing written statement contending *inter-alia* that while performing job in Currency Chest at Nabapally Branch of Bank of India, the workman taking advantage of temporary absence of Currency Chest Officer on 29.06.1999, committed theft by removing one bundle consisting of Rs. 500 denomination notes amounting to Rupees five lac from the currency chest. Subsequently he admitted the said incident and led the recovery of entire money. The workman also made confessional statements on 02.07.1999 and also on 05.07.1999. Thereafter enquiry was held by the Enquiry Officer appointed by the Disciplinary Authority. The enquiry was held on different dates and the concerned workman was present on every date along with his defence representative. During enquiry on 22.09.1999, the concerned workman admitted the charge leveled against him. Ultimately on 16.11.1999, the Enquiry Officer submitted his report where the charge was found to have been substantiated. The Disciplinary Authority accordingly issued show-cause punishment notice. Ultimately order of dismissal of the workman was passed. Against the said order of dismissal, the workman preferred an appeal before the Appellate Authority but he lost the appeal. Ultimately industrial dispute was raised by the workman. Hence this reference. It is contended that the enquiry was held in accordance with the provisions of the Standing Orders and bipartite settlement of the Bank and that fair opportunities were given to the workman to defend his case. Natural justice was also extended to him at every stage of domestic enquiry. The management has, thus, prayed that the instant reference may be answered in the affirmative.

4. The concerned workman has examined himself in order to prove his case. He has not produced any document in support of his case.

5. On the other hand, management in support of its case, has examined two witnesses and proved documents marked Exts. M-01 to M-05 (Ext. M-04 includes ME-01 to ME-10).

6. In this case the first issue of the reference to be decided is whether the dismissal of Shri Subal Das (ex-Sweeper) from service is legal and justified.

Admittedly the management dismissed the said workman from service after holding domestic enquiry against him. It is the contention of the workman that the domestic enquiry was not proper and valid as natural justice was not extend to him during such enquiry and that he was not given opportunity to cross-examine the witness and thereby denied the opportunity to defend his case. It is also alleged that the findings of the enquiry was not based on evidence. The management has opposed the above contentions of the workman.

7. In view of such contention and counter contention of the parties, it is the duty of the Tribunal to ascertain as to whether or not the domestic enquiry held against the workman was valid and proper.

8. From the order dated 2.03.2015 it is evident that after hearing both sides and after considering the evidence on record this Tribunal has come to the conclusion that the report of the Enquiry Officer is legal, valid and proper as the same was prepared after observing all the rules and formalities of the enquiry.

9. It is submitted on behalf of the workman that the statements of Tarit Kumar Das and Pranab Kumar Goswami which were recorded before holding the domestic enquiry, go to show that money in question was recovered from the 2nd drawer of Tarat Kumar Das and as such the said statements cast a cloud of doubt about genuineness of the confessional statement of the workman.

10. It is also submitted that the workman has made scapegoat by the management in order to save the officers concerned who were actually involved in the crime.

In this connection the Ld. Counsel has pointed out the statements of the said persons, namely, Tarit Kumar Das and Pranab Kumar Goswami (Ext. M-04).

11. Perused the statements of the said two officers of the Bank/management with reference to the confessional statements of the delinquent workman made on 02.07.1999 and 05.07.1999.

It appears that the confessional statements of the workman corroborate the said two statements of the bank officers. The confessional statements go to show that the workman at first kept eight (8) bundles of currency notes on the top of the Almirah and before leaving the Bank he kept the same in the 2nd drawer of the counting table. Subsequently, when Shri Das went to that table for recounting, he noticed the said 8 bundles currency notes in that drawer. The evidence on record does not go to show that the said recounting table was exclusively used by Shri Das and nobody were/are allowed to use that table.

Moreover, it appears from the statements of Pranab Kumar Goswami and other persons (Ext. M-04) that the concerned workman led the recovery of the remaining rupees one lac which he kept concealed in the house of his relative.

12. In this case on the basis of the confessional statements and the statements of other persons, charge was framed against the workman and that charge of theft was admitted by the workman. Considering the above facts and circumstances Enquiry Officer found the workman guilty of the charge and submitted report to that effect, it was never alleged from the side of the workman that the said confessional statements were obtained under coercion and threat and that he never led any recovery of rupees one lac.

Moreover, no question of victimization or unfair labour practice or management having bias against the workman can arise once it is held that the findings of misconduct alleged against the workman were properly arrived at and the domestic enquiry was in no way vitiated.

13. Since it has been decided that the domestic enquiry held against the concerned workman is valid and since the said order has not been challenged by any of the parties, the workman has no right to agitate that the charge framed against him is false as he had no scope to commit theft of currency notes in presence of his officers who were supposed to be present in the currency chest when the same was opened for counting and other purpose. So it appears that the domestic enquiry was valid and the findings of the enquiry were not perverse.

14. In this case, the workman was dismissed from service as the charge of theft against him was proved in the domestic enquiry. From the said action of the management it may reasonably be presumed that the management/Bank which deals with the public money, lost confidence in the workman due to the lack of his integrity and honesty. Such distrust of the management cannot be brushed aside under the carpet because in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee. It is not observed, the confidence of the public/depositors would be impaired. So, theft by an employee of the Bank is the theft of public money and must be treated differently. Such misconduct cannot be treated lightly.

15. By referring three decisions reported in 1973-I-LLJ 278; 2001-II-LLJ 1259 and 2010-III-LLJ 500 it has been submitted on behalf of the workman that after incorporation of Section 11A in the Industrial Disputes Act, 1947 this Tribunal is entitled to hold that even if the misconduct is proved, the punishment of dismissal is not justified.

16. It is well settled that before the insertion of Section 11A, the Tribunal could interfere with the quantum of punishment only where punishment was shockingly disproportionate with the gravity of misconduct committed by the delinquent workman because that could lead to the inference of mala fides but now it has the jurisdiction to interfere with the punishment, the tribunal has only to see whether the punishment imposed by the

employer is commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that punishment is not justified because the misconduct alleged and proved is such as does not warrant the punishment of discharge of dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit, or give any other relief including the ward of punishment in lieu of discharge or dismissal as the circumstances of the case may warrant.

But, in this case it has already been discussed that major misconduct i.e., theft of public money has been proved against the bank employee. So it cannot be said that the punishment is not justified because of misconduct alleged and found proved is such that it does not warrant dismissal or discharge.

17. The Ld. Counsel for the workman has referred three decisions reported in 1989-I-71; 2000-11-LLJ1599 and 2006-II-LLJ 401 and submitted that the workman should be given opportunity to reform himself and prove to be loyal and disciplined employee.

18. It has already been pointed out that charge of theft in respect of public money has been established against the bank employee and it appears that the management dismissed him from service as it lost confidence in the said employee on apprehension that he could commit such offence again in future, if he was allowed to continue the job.

19. In this context it is desirable to mention the decision reported in (2006) 5 S.C.C. 201 where the Hon'ble Supreme Court has held that:

"If the enquiry is fair and proper then in the absence of any allegation of victimization or unfair labour practice the Labour court has no power to interfere with the punishment imposed. Section 11-A of the industrial Disputes Act, 1947 gives ample power to the Labour court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment....."

It has also been held in a decision reported in (2000) 7 S.C.C. 517 that

"After finding that charges against the workman for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established, the Labour Court materially erred in setting aside the order passed by the management removing the workmen concerned from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service.

In case of proved misappropriation, there is no question of considering the past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

The Hon'ble Supreme Court has also observed in a decision reported in (2006) 12 S.C.C. 554 that:

"We find that the Labour Court has found the enquiry to be fair and proper. The conduct highlighted by the management and established in enquiry was certainly of a very grave nature. The Labour Court and High Court had not found the misconduct was of any minor nature. On the contrary, the finding on facts that the act complained of has not been disturbed. That being so, the leniency shown by the Labour Court is certainly unwarranted and would in fact, encourage indiscipline. Without indicating any reason as to why it was felt that the punishment was disproportionate, the Labour Court should not have passed the order in the manner done...."

20. Considering the above facts and circumstances and the nature and gravity of the offence and in view of the decisions of the Hon'ble Supreme Court I do not find any reason to interfere with the decision of the management/ Bank in dismissing the concerned workman.

21. Accordingly the instant reference is answered in the affirmative and the concerned workman is not entitled to get any relief whatsoever.

Dated, Kolkata,

The 3rd August, 2015.

JUSTICE DIPAK SAHA RAY, Presiding Officer